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**IN THE  
SUPREME COURT  
OF THE UNITED STATES**

**October Term, 1983**

**MARY ANN SCHWEGMANN, a/k/a  
MARY ANN BLACKLEDGE,**

**Petitioner,**

**vs.**

**JOHN G. SCHWEGMANN, JR., et al.,**

**Respondents.**

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**PETITION FOR WRIT OF CERTIORARI**

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**Vol. I of II**

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# I

## QUESTIONS PRESENTED

1. Whether there are valid independent state grounds for the dismissal of Mary Ann Blackledge, a/k/a Mary Ann Schwegmann's cause of action for breach of an oral contract?

2. Whether or not Article 1481 of the Louisiana Civil Code violates the Equal Protection Clause of the Fourteenth Amendment to the federal Constitution?

II

LIST OF PARTIES

MARY ANN SCHWEGMANN, a/k/a  
MARY ANN BLACKLEDGE

VS.

JOHN G. SCHWEGMANN, JR.,  
JOHN F. SCHWEGMANN, MELBA  
MARGARET SCHWEGMANN, AND  
SCHWEGMANN BROS. GIANT  
SUPERMARKETS, INC.,  
SCHWEGMANN BROS. TERMINAL,  
INC., SCHWEGMANN BROS.,  
INC., SCHWEGMANN BROS. WEST-  
BANK, INC., SCHWEGMANN BROS.  
WESTSIDE CORPORATION AND  
SCHWEGMANN VETERANS  
CORPORATION

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MARY ANN SCHWEGMANN a/k/a  
MARY ANN BLACKLEDGE

Appellants,

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SUPREME COURT OF THE  
STATE OF LOUISIANA,

Respondent.

---

PETITION FOR WRIT OF CERTIORARI

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V  
CITATION TO OPINION BELOW

The opinion of the Honorable Judge Frank J. Zaccaria filed September 28, 1982 from the Twenty-Fourth Judicial District Court, Parish of Jefferson, State of Louisiana, was not reported. Nor was the opinion of the Fifth Circuit Court of Appeal, State of Louisiana filed November 9, 1983. The Supreme Court of the State of Louisiana denied the Petition for Writ of Certiorari and Review on January 6, 1984, without opinion.

VI  
JURISDICTIONAL STATEMENT

The Petition for a Writ of Certiorari and Review of Mary Ann Blackledge, a/k/a Mary Ann Schwegmann, to the Supreme Court of the State of Louisiana was denied on January 6, 1984.

No rehearing nor extension

of time in which to petition for certiorari was requested.

The statutory provision believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari is 28 USC §1257(3).

## VII

### CONSTITUTIONAL PROVISIONS

The constitutional provisions and statutes involved in this case are as follows:

(a) The "Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Federal Constitution:

"Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."



[Emphasis added]

(b) Article 1481 of the Louisiana

Civil Code:

"Art. 1481. Those who have lived together in open concubinage are respectively incapable of making to each other, whether inter vivos or mortis causa, any donation of immovables; and if they make a donation of movables, it cannot exceed one-tenth part of the whole value of their estate. Those who afterwards marry are excepted from this rule."

(c) Article 2829 of the Louisiana Civil Code (repealed by Acts 1980

No. 150):

"Universal partnership is a contract by which the parties agree to make a common stock of all the property they respectively possess; they may extend it to all property real or personal, or restrict it to personal only; they may, as in other partnerships, agree that the property itself shall be common stock or that the fruits only shall be such; but property which may accrue to one of the parties, after entering into the partnership, by donation, succession or legacy, does not become common stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void."

(d) Article 2830 of the Louisiana Civil Code (repealed by Acts 1980 No. 150):

"A universal partnership of profits includes all the gains that may be made from whatever source, whether from property or industry, with the restriction contained in the last article, and subject to all legal stipulations to be made by the parties."

(e) Article 2831 of the Louisiana Civil Code (repealed by Acts 1980

No. 150):

"If nothing more is agreed between the parties, than there shall be a universal partnership, it shall extend only to the profits of the property each shall possess, and of their credit and industry."

(f) Article 2834 of the Louisiana Civil Code (repeated by Acts 1980

No. 150):

"A universal partnership cannot be created 'without writing signed by the parties, and registered in the manner hereafter prescribed.'"

(g) Article 2801 of the Louisiana Civil Code (effective January 1,

1980):

"A partnership is a juridical person distinct from its partners, created by a contract between two or more persons to combine their efforts or resources in determined proportions and to collaborate at mutual risk for their common profit on commercial benefit. \* \* \* \*

Section 3. The provisions of this act shall apply to all partnerships, including those existing on the effective date of this act [January 1, 1980]."

### VIII

#### STATEMENT OF THE CASE

The salient facts of the case are as follows:

Plaintiff, Mary Ann Blackledge, a/k/a Mary Ann Schwegmann (hereinafter referred to as "Mary Ann"), began working at the Schwegmann Stores in 1958 when she was seventeen (17) years of age. Mary Ann thereafter became employed by the Shell Oil Company, where she worked until 1965. Notwithstanding her position at Shell, Mary Ann continued her duties

as a consultant to Defendant John G. Schwegmann, Jr., (hereinafter referred to as "John"), focusing primarily on managements and public relations.

As a result of Mary Ann's consulting activities, she and John commenced a joint venture relationship which engaged in the ownership and operation of several businesses, and which spanned a twenty-one (21) year time period. Mary Ann and John were primarily engaged in real estate development and acquisitions. Some of those ventures were commonly referred to as the Georgia/Pacific and ancillary land venture in St. Charles Parish, Powers Drive, Tall Timbers, Crowder Road, and Bullard Road. Mary Ann contributed all of her profits back into the joint venture projects during this entire period of time.

On May 15, 1966, Mary Ann and

John entered into an oral contract whereby they agreed, inter alia, that in exchange for Mary Ann's continuing to work as a consultant to the Schwegmann stores and in consideration of the joint venture nature of their real estate investments, they would share equally in any profits and proceeds realized as a result of those stores and investments. Pursuant to the contract, Mary Ann advised John and the board members of the corporations and companies comprising the Schwegmann stores (Schwegmann Brothers Giant Supermarkets, Inc., Schwegmann Bros. Terminal, Inc., Schwegmann Bros., Inc., Schwegmann Bros. Westbank, Inc., Schwegmann Bros. Westside Corporation, and Schwegmann Veterans Corporation) regarding (1) salaries of employees; (2) policy decisions; (3) design, planning and building of the Schwegmann stores built after 1968;

(4) the day to day operations of the stores. Mary Ann spoke to managers of the Schwegmann stores, tested products and compared prices for the stores, as well as wrote editorials contained within the advertisements run by the stores on a weekly basis.

On the personal level, Mary Ann and John resided together and Mary Ann took care of all of the household tasks at their residence, Green Acres Road House. Mary Ann cared for John's daughter for thirteen (13) years, as if she were her own, and later cared for John during his protracted illness until the termination of their relationship, at John's insistence, in 1978.

The constitutional argument was raised in the trial, appellate, and Supreme courts of the State of Louisiana.

Mary Ann filed a Petition for:

Specific Performance and/or Damages based on Breach of Contract, for the Recognition of Construction Trust or Damages Based on Implied Contract, for Declaratory Relief, for Quasi Contract and/or Quantum Meruit, for Interference with Contract Rights, and for Declaration of Simulation and/or Revocatory Action, in the 24th Judicial District Court, Parish of Jefferson, State of Louisiana, on October 5, 1979. The first and second causes of action sought recovery based on an oral contract and/or an implied in fact contract (based on the parties' conduct) whereby Mary Ann agreed to act as a business consultant for the Schwegmann stores and to participate with John Schwegmann in numerous real estate joint ventures, in addition to being John Schwegmann's companion, in exchange for a one-half ownership interest in John's interest



in the Schwegmann stores and a one-half interest in all of the parties' joint venture interests.

The petition was partially dismissed on a motion for summary judgment brought by the defendants, John J. Schwegmann, Jr., et al. The only cause of action not dismissed was that for Quasi-Contract and/or Quantum Meruit as that cause of action concerned Mary Ann's business as opposed to her personal endeavors on John's behalf. The judgment was signed on the 13th of September, 1982, and was timely appealed to the Fifth Circuit Court of Appeals. A Judgment was rendered by the Fifth Circuit Court of appeals on November 9, 1983, upholding the judgment of the lower court. No motion for a rehearing was filed. Mary Ann filed a Petition for a Writ of Certiorari with the Supreme Court of the State



of Louisiana. The Writ was denied on January 6, 1984.

The two documents demonstrating that the constitutional issues were timely raised in the courts of the State of Louisiana are the decision, filed November 9, 1983, of the Court of Appeal, Fifth Circuit, State of Louisiana (a copy of which is attached hereto as Appendix "B"), and the Petition for Writ of Certiorari to the Supreme Court (a copy of which is attached hereto as Appendix "C"). The Court of Appeal's decision disposed of the constitutional issues raised on page 9 and 10, as follows:

"A substantial portion of the plaintiff counsel's brief is devoted to a historical analysis of the Louisiana law on concubinage to show that its development was predicated on public policy construed by the judiciary. She then argues that changes in the mores of society as regards cohabitation have changed to radically, we should not impose on a man and woman who cohabit without marriage a standard based

on moral considerations merely to protect Victorian values which have been abandoned by so many in our society. Therefore, she urges it is time for the courts of Louisiana to develop a legal vehicle to protect the property rights obtained during cohabitation by a male and female in a sexual relationship without benefit of marriage. In support of the contentions, she urges a constitutionally protected right against discrimination between wives and concubines. She compares the discrimination she sees to that formerly existing between legitimate and illegitimate children and says concubinage discriminates against black heritage and culture but more particularly against women.

We neither agree with her appreciation of the sociological changes nor the necessity for a change in legal philosophy as to concubinage nor do we see the violation of a constitutionally protected right against discrimination. The State has valid reason to discourage relationships which serve to erode the cornerstone of society, i.e., the family. In every known civilized society, replacement of its members is performed within the context of the family. Although it is conceivably possible that sexual relations and child rearing could be deregulated or governed by norms that do not entail the encouragement, support and protection of family institutions, past experiments in that direction have failed. (See "The Attempt to Abolish

the Family in Russia" in The Great Retreat by Nicholas S. Timasheff, Copyright 1946 by E.P. Dutton & Co., Inc. Further, in the case of the children, legitimate or illegitimate, they were not the cause of their status, but here the status of concubine was a voluntary and desired one, for the partis neither married, wanted to marry, nor believed they were married.

Under present Louisiana law, unmarried cohabitation does not give rise to property rights analogous to or similar to those of married couples. Concubines have no implied contract or equitable liens that afford them any rights in the property or their paramours. Moreover, in our view, although Victorian, the values sought to be protected by the formulation of those legal concepts are imperative if we are to maintain our civilized society.

As framed in Mary Ann's Petition for Certiorari, the constitutional issues are:

"ISSUE XI. Does Louisiana Civil Code Article 1481 violate the United States Constitution . . .?"

"ISSUE XII. Does the public policy argument used by the Court in concubinage cases violate the United States Constitution . . .?"

## IX

### SPECIAL AND IMPORTANT REASONS FOR A REVIEW OF THIS CASE ON A WRIT OF CERTIORARI (Argument in Accordance with Rule 17)

In this case, a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort, i.e., the California Supreme Court in the case of Marvin v. Marvin (1976) 18 Cal.3d 660, in addition to which, a state court has decided an important question of federal law which has not been, but should be, settled by this Court, and, moreover, has decided a federal question in a way in conflict with applicable decision of this Court.

At first blush, it might appear that there exists valid independent state grounds for the dismissal of Mary Ann's oral contract cause of action, but, as will be demonstrated below, such is not

the case. Furthermore, there are no possible independent state grounds for the dismissal of Mary Ann's implied in fact contract claim, and it will be demonstrated that the dismissal of both of these causes, as they pertain to Mary Ann's business ventures with John Schwegmann, violate the Equal Protection Clause of the Fourteenth Amendment to the federal Constitution.

A. THERE ARE NO VALID INDEPENDENT  
STATE GROUNDS FOR THE DISMISSAL  
OF MARY ANN'S CAUSE OF ACTION  
FOR BREACH OF ORAL CONTRACT

Both the trial court and the Court of Appeals found that Mary Ann's oral contract with John was void as it constituted a "universal partnership" which must, to be valid, be in writing. As is made abundantly clear in Mary Ann's Petition for a Writ of Certiorari, filed with the Supreme Court for the State

of Louisiana (attached hereto as Appendix "C"), the universal partnership provisions of the Louisiana Civil Code, Articles 2829 to 2834, were repealed by Act 150 of 1980. The new partnership law in the State of Louisiana, Articles 2801 through 2890 of the Louisiana Civil Code, effective January 1, 1981, eliminated all classifications of partnerships. Under this new law, the only type of partnership in existence is an ordinary partnership which need not be in writing to be valid. Article 2801 of the Louisiana Civil Code. Furthermore, Section 3 of the new law provides that the provisions of the Act are to be applied to all partnerships in existence on the effective date of the Act, i.e., January 1, 1981.

Mary Ann's and John's partnership, as alleged and as accepted as fact for purposes of the motion for summary judgment,

was created in 1966 and continues to exist to the present time. The fact that John has breached certain provisions of the partnership agreement between the parties does not effect its existence as a legal entity, but only necessitates the judicial imposition of one or more remedies. Therefore, the agreement need not have been in writing to be valid, and the lower courts' purported independent state grounds for invalidating the express partnership must fail.

B. THE LOWER COURTS' DISMISSAL  
OF MARY ANN'S CONTRACTUAL CLAIMS,  
(BOTH ORAL AND IMPLIED)  
WHILE UPHOLDING HER QUANTUM MERUIT  
CLAIM, REGARDING THE BUSINESS  
SERVICES SHE PROVIDED THE SCHWEGMANN  
STORES AND JOHN PERSONALLY,  
VIOLATES THE EQUAL PROTECTION CLAUSE  
OF THE FOURTEENTH AMENDMENT TO  
THE FEDERAL CONSTITUTION

The lower courts' properly determined that, given the opportunity to do so, Mary Ann could establish real



and substantial business services performed for the defendants, including John, that have not been previously compensated and which were separate and distinct from the concubinage relationship. (Decision of the Court of Appeals, attached hereto as Appendix "B", page 13.) In the words of the Court of Appeals:

"Plaintiff testified she performed business services for Mr. Schwegmann and his corporations by (1) helping him write editorials for Schwegmann's newspaper advertisements; (2) rendering investment advice; (3) assisting and rendering advice as to Mr. Schwegmann's political career; and 94) keeping him informed of things she saw in the stores which could have an adverse effect on the business. Under our law, the plaintiff may be entitled to compensation for the rendition of the services if the services were in fact rendered and do meet the prerequisites of the equitable principles formulated by the jurisprudence for recovery. In the Bonaventure case, supra, the Third Circuit clearly stated the equitable principles upon which recovery can be had:

'Our jurisprudence appears settled to the effect that



predicated upon equitable principles, the claims of a paramour and concubine will be recognized and enforced with respect to joint or mutual commercial ventures, provided such enterprises arose independently of the illicit relationship. Heatwold v. Stansbury, 212 La. 685, 33 So.2d 196; Sparrow v. Sparrow, 231 La. 966, 93 So.2d 232; Foshee v. Simkin, La. App., 174 So.2d 915.

The rationale of the rule pronounced in the Heatwold, Sparrow and Foshee cases, supra (and the numerous authorities therein cited) is that where the concubinage is merely incidental to the business arrangement, the equitable rights of both parties will be recognized and enforced provided they be established by strict and conclusive proof. Stated otherwise, the rule is that if the commercial enterprise is independent of the illegal cohabitation, each party may assert his rights in the common endeavor.

Since the issue arose on a motion for summary judgment the trial judge concluded and we agree the plaintiff must be given every benefit of the doubt. Conceivably given the opportunity to do so, she could establish real and substantial business services performed for the defendants, including Mr.

Schwegmann, that have not been previously compensated and which were separate and distinct from the concubinage relationship. Accordingly, we agree with the trial judge's ruling excepting her claim of compensation for business services from the summary dismissal of her claims."

The lower courts' determination that Mary Ann is limited to the equitable remedy of quantum meruit, as opposed to her legal remedies for breach of contract, appears to be predicated, albeit tacitly, on Louisiana Civil Code Article 1481, which provides as follows:

"Art. 1481. Those who have lived together in open concubinage are respectively incapable of making to each other, whether inter vivos of mortis causa, any donation of immovables; and if they make a donation of movables, it can not exceed one-tenth part of the whole value of their estate.

Those who afterwards marry are excepted from this rule."

Denying Mary Ann her legal remedies simply because she was also engaged in a so-called "concubinage"

relationship with her business partner is a clear and patent denial of equal protection pursuant to the federal Constitution and thus, Article 1481 is overinclusive.

The basic principles governing application of the Equal Protection Clause of the Fourteenth Amendment are extremely familiar to this Honorable Court. As explained by the Chief Justice in Reed v. Reed, 404 U.S. 71, 75-76 (1971):

"In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny States the power to treat different classes of persons in different ways. Barbier v. Connolly, 113 U.S. 27 (1885); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911); Railway Express Agency v. New York, 336 U.S. 106 (1949); McDaniel v. Board of Election Commissioners, 394 U.S. 802 (1969). The Equal Protection Clause of that amendment does, however, deny to the States the power to legislate that different treatment to be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary,

and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" Royster Guana Co. v. Virginia, 253 U.S. 412. 415 (1920)."

Thus, the question for this Court's determination in this case is whether there is some ground of difference that rationally explains the different treatment accorded business partners who have never engaged in sexual relations and business partners whose enterprises arose independently of their sexual relationship.

In Eisenstadt, this Court held that a Massachusetts statute prohibiting, inter alia, the dispensing of contraceptives to unmarried persons provided dissimilar treatment for married and unmarried persons who are similarly situated and thus violated the Equal Protection Clause of the

Fourteenth Amendment. Eisenstadt, supra, 405 U.S. at 446-455. This Court based its holding on its conclusion that the deterrence of premarital sex could not have reasonably been regarded as the purpose of the Massachusetts law. Id. at 448. In so concluding, this Court reasoned as follows:

"It would be plainly unreasonable to assume that Massachusetts has prescribed pregnancy and the birth of an unwanted child as punishment for fornication, which is a misdemeanor under Massachusetts General Laws Ann., c. 272 §18. Aside from the scheme of values that assumption would attribute to the State, it is abundantly clear that the effect of the ban on distribution of contraceptives to unmarried persons has at best a marginal relation to the proffered objective. What Mr. Justice Goldberg said in Griswold v. Connecticut, supra, at 498 (concurring opinion), concerning the effect of Connecticut's prohibition on the use of contraceptives in discouraging extramarital sexual relations, is equally applicable here. 'The rationality of this justification is dubious, particularly in light of the admitted widespread availability to all persons in the State of Connecticut, unmarried

as well as married, of birth-control devices for the prevention of disease, as distinguished from the prevention of conception.' See also id., at 505-507 (WHITE, J., concurring in judgment). Like Connecticut's laws, §§21 and 21A do not at all regulate the distribution of contraceptives when they are to be used to prevent, not pregnancy, but the spread of disease. Commonwealth v. Corbell, 307 Mass. 7, 29 N. E. 2d 151 (1940), cited with approval in Commonwealth v. Baird, 355 Mass., at 754, 247 N. E. 2d, at 579. Nor, in making contraceptives available to married persons without regard to their intended use, does Massachusetts attempt to deter married persons from engaging in illicit sexual relations with unmarried persons. Even on the assumption that the fear of pregnancy operates as a deterrent to fornication, the Massachusetts statute is thus so riddled with exceptions that deterrence of premarital sex cannot reasonably be regarded as its aim.

Moreover, §§21 and 21A on their face have a dubious relation to the State's criminal prohibition on fornication. As the Court of Appeals explained, 'Fornication is a misdemeanor [in Massachusetts], entailing a thirty dollar fine, or three months in jail. Massachusetts General Laws Ann. c. 272 § 18. Violation of the present statute is a felony punishable by five years in prison. We find it hard to believe

that the legislature adopted a statute carrying a five-year penalty for its possible, obviously by no means fully effective, deterrence of the commission of a ninety-day misdemeanor.' 429 F. 2d, at 1401. Even conceding the legislature a full measure of discretion in fashioning means to prevent fornication, and recognizing that the State may seek to deter prohibited conduct by punishing more severely those who facilitate than those who actually engage in its commission, we, like the Court of Appeals, cannot believe that in this instance Massachusetts has chosen to expose the aider and abetter who simply gives away a contraceptive to 20 times the 90-day sentence of the offender himself. The very terms of the States criminal statutes, coupled with the de minimis effect of §§ 21 and 21A in deterring fornication, thus compel the conclusion that such deterrence cannot reasonably be taken as the purpose of the ban on distribution of contraceptives to unmarried persons."

In terms of the standard of review to be applied in this case, it bears noting that this case presents a hybrid situation in that the area of regulation is economic, but the classification involves privacy concerns. It is



respectfully submitted that the "intermediate" level of scrutiny utilized in Eisenstadt, supra, is the standard most befitting of the instant set of facts. As interpreted by the Louisiana courts, Article 1481 is justified by the State's "valid reason to discourage relationships which serve to erode the cornerstone of society, i.e., the family. . . . Moreover, in our view, although Victorian, the values sought to be protected by the formulation of those legal concepts are imperative if we are to maintain our civilized society." (Appendix "B", p. 9).

In the language employed by this Court in Eisenstadt,

"[a]side from the scheme of values that assumption would attribute to the State, it is abundantly clear that the effect of the [application of Article 1481 to business partners whose ventures are independent of their sexual relationship] has at



best a marginal relation to the proffered objective."

Eisenstadt, supra, 405 U.S. at 446.

First, the identical argument was persuasively rejected by the California Supreme Court in the landmark case of Marvin v. Marvin (1976) 18 Cal.3d 660, wherein the Court held that the terms of the contract as alleged by a nonmarital cohabitor did not rest upon any unlawful consideration and thus it furnished a suitable basis upon which the trial court could render declaratory relief:

"The argument that granting remedies to the non-marital partners would discourage marriage must fail; as [In re Marriage of] Cary [(1973), 34 Cal.App.3d 345] pointed out, 'with equal or greater force the point might be made that the pre-1970 rule was calculated to cause the income-producing partner to avoid marriage and thus retain the benefit of all of his or her accumulated earnings.' (34 Cal.App.3d at p. 353.) Although we recognize the well-established public policy to foster and promote the institution of marriage (see Deyoe v. Superior Court (1903) 140 Cal. 476, 482 [74 P. 28]), perpetuation of judicial

rules which result in an inequitable distribution of property accumulated during a nonmarital relationship is neither a just or an effective way of carrying out that policy.

In summary, we believe that the prevalence of nonmarital relationships in modern society and the social acceptance of them, marks this as a time when our courts should by no means apply the doctrine of the unlawfulness of the so-called meretricious relationship to the instant case. As we have explained, the nonenforceability of agreements expressly providing for meretricious conduct rested upon the fact that such conduct, as the word suggests, pertained to and encompassed prostitution. To equate the nonmarital relationship of today to such a subject matter is to do violence to an accepted and wholly different practice.

We are aware that many young couples live together without the solemnization of marriage, in order to make sure that they can successfully later undertake marriage. This trial period, preliminary to marriage, serves as some assurance that the marriage will not subsequently end in dissolution to the harm of both parties. We are aware, as we have stated, of the pervasiveness of nonmarital relationships in other situations.

The mores of the society have indeed changed so radically in regard to cohabitation that we cannot impose a standard based on alleged moral

considerations that have apparently been so widely abandoned by so many. Lest we be misunderstood, however, we take this occasion to point out that the structure of society itself largely depends upon the institution of marriage, and nothing we have said in this opinion should be taken to derogate from that institution. The joining of the man and woman in marriage is at once the most socially productive and individually fulfilling relationship that one can enjoy in the course of a lifetime.

(8b) We conclude that the judicial barriers that may stand in the way of a policy based upon the fulfillment of the reasonable expectations of the parties to a nonmarital relationship should be removed. As we have explained, the courts now hold that express agreements will be enforced unless they rest on an unlawful meretricious consideration. We add that in the absence of an express agreement, the courts may look to a variety of other remedies in order to protect the parties' lawful expectations." Marvin, supra, 18 Cal.3d at 683-684.

The instant case poignantly demonstrates the fallacy in the Louisiana court's reasoning (and the correctness in the California court's reasoning) regarding the discouragement of relation-

ships which serve to erode the family. John, the wealthier of the two income-producing partners, was the partner who sought to avoid marriage. Marriage would have resulted in Mary Ann's automatic entitlement to her fair share of the fruits of their joint labors, whereas John's refusal to marry Mary Ann has, at least for a time, resulted in her being deprived of those fruits.

The Louisiana courts' justification becomes even more dubious when Article 1481 is applied to business partners who incidentally cohabitate. See, e.g., Ferguson v. Scheunemann (1959) 167 Cal.App.2d 413.

It is an absurd proposition that all business partners who have legitimate business relations outside of their sexual liason must marry in order to be granted the right to their share of

their business acquisitions, and such compulsion cannot reasonably be taken as the purpose of the ban on contracts as between "concubines" and "paramours". Thus, it is readily apparent that Article 1481 of the Louisiana Civil Code is over-inclusive.

The analysis of the requisite relationship between classifications and legislative objectives called for by traditional equal protection standards, in the classic discussion by Tussman and tenBroek, "The Equal Protection of the Laws," 37 Cal.L.Rev. 341 (1949), Selected Essays 1938-62 (1963), includes an excellent discussion of "over-inclusiveness":

"[This] . . . the type of classification imposes a burden upon a wider range of individuals than are included in the class of those tainted with the mischief at which the law aims. It can thus be called 'over-inclusive.' [It] is exemplified by the quarantine

and the dragnet. The wartime treatment of American citizens of Japanese ancestry is a striking recent instance of the imposition of burdens upon a large class of individuals because some of them were believed to be disloyal . . ."

Clearly, Article 1481 of the Louisiana Civil Code is over-inclusive as it precludes all persons who have lived together in "open concubinage" from contracting respecting their immovables with no exception made for persons such as Mary Ann who also engaged in independent business relations with their "paramours".

Thus, by providing dissimilar treatment for business partners who have not engaged in sexual relations and business partners who have engaged in sexual relations wholly independent from their business relationship who are similarly situated, Article 1481 of the Louisiana Civil Code violates the Equal Protection Clause. Eisenstadt, *supra*, 405 U.S.

at 454-455.

X

CONCLUSION

For all of the foregoing reasons,  
Petitioner, Mary Ann Blackledge, a/k/a  
Mary Ann Schwegmann, respectfully requests  
that this Honorable Court grant her Petition  
for a Writ of Certiorari.

Respectfully submitted,

LAW OFFICES OF  
MARVIN M. MITCHELSON  
and  
BETTYANNE LAMBERT-BUSSOFF

By 

MARVIN M. MITCHELSON

Attorneys for Appellant

MARY ANN SCHWEGMANN  
a/k/a/  
MARY ANN BLACKLEDGE



**APPENDIX A**

APPENDIX "A"

TWENTY-FOURTH JUDICIAL  
DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 231-175

DIVISION "B"

MARY ANN BLACKLEDGE

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL.

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

F I L E D

SEP 28 1982

R. MARTIN  
Deputy Clerk

JUDGMENT

Considering Defendants' Motion  
for Summary Judgment filed by defendants  
John G. Schwegmann, John F. Schwegmann,  
Melba Margaret Schwegmann and Schwegmann  
Giant Super Markets, Inc; the pleadings,  
depositions and affidavits in this  
case; the memoranda and oral arguments

of counsel; for the reasons stated in the  
Reasons for Judgment issued this date  
and for reasons orally assigned;

IT IS ORDERED that Defendants'  
Motion for Summary Judgment be granted  
dismissing all of plaintiff's claims ex-  
cept that the Court denies the Motion  
for Summary Judgment insofar as plaintiff  
seeks to recover in quantum meruit for  
the value of uncompensated services, if  
any, performed separate and apart from  
the relationship of concubinage, rendered  
by her in furnishing business assistance  
to the defendants.

Gretna, Louisiana

September 28, 1982

S/ Frank J. Zaccaria  
JUDGE

A TRUE COPY OF THE ORIGINAL  
ON FILE IN THIS OFFICE

R. MARTIN  
Deputy Clerk  
24TH JUDICIAL DISTRICT COURT  
Parish of Jefferson, LA.

TWENTY-FOURTH JUDICIAL  
DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 231-175

DIVISION "B"

MARY ANN BLACKLEDGE

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL.

FILED: \_\_\_\_\_

DEPUTY CLERK

F I L E D

SEP 28 1982

R. MARTIN  
DEPUTY CLERK

ORDER

Considering the Rule to Show  
Cause Why the Firms of Stone, Pigman,  
Walther, Wittmann & Hutchinson and Char-  
bonnet & Charbonnet Should Not Be Recused  
from their Representation of Defendants  
for a Violation of the A.B.A. and Loui-  
siana Codes of Professional Responsibility

filed by plaintiff Mary Ann Blackledge;  
the evidence presented at the hearing  
held in this proceeding on September 3,  
1982; the memorandum and oral arguments  
of counsel; and for reasons orally assigned;

IT IS ORDERED that the plain-  
tiff's Rule to Show Cause Why the Firms  
of Stone, Pigman, Walther, Wittmann &  
Hutchinson and Charbonnet & Charbonnet  
Should Not Be Recused from their Repre-  
sentation of Defendants for a Violation  
of the B.B.A. and Louisiana Codes of  
Professional Responsibility is denied  
as to Stone, Pigman, Walther, Wittmann  
& Hutchinson and is continued without  
date as to Charbonnet & Charbonnet.

Gretna, Louisiana

September 28, 1982

s/ Frank J. Zaccaria  
JUDGE

TWENTY-FOURTH JUDICIAL  
DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 231-175

DIVISION "B"

MARY ANN BLACKLEDGE

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL.

FILED: \_\_\_\_\_  
DEPUTY CLERK

ORDER

Considering the Rule to Show Cause Why the Negotiated Settlement Should Not Be Enforced filed by plaintiff Mary Ann Blackledge; the evidence presented at the hearing held in this proceeding on September 3, 1982; the memorandum and oral arguments of counsel; and for reasons orally assigned;

IT IS ORDERED that the plaintiff's Rule to Show Cause Why the Negotiated

Settlement Should Not Be Enforced is dismissed.

Gretna, Louisiana

September 28, 1982

s/ Frank J. Zaccaria  
JUDGE



TWENTY-FOURTH JUDICIAL  
DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 231-175

DIVISION "B"

MARY ANN BLACKLEDGE

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL.

FILED:

DEPUTY CLERK

REASONS FOR JUDGMENT  
ON  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff Mary Ann Blackledge has brought this action against John G. Schwegmann, his children John. F. Schwegmann and Melba Margaret Schwegmann and certain business entities praying for judgment declaring her owner of a one-half undivided interest in Mr. Schwegmann's property, an interest she values at thirty million dollars, and certain other relief.

Defendants John G. Schwegmann,

John F. Schwegmann, Melba Margaret Schwegmann and Schwegmann Giant Super Markets, Inc. have filed a Motion for Summary Judgment requesting dismissal of all plaintiff's claims. For purposes of the motion, we accept as true the plaintiff's extensive deposition testimony.

Plaintiff claims that she and Mr. Schwegmann, who lived together without marriage for twelve years, had an oral contract. The substance of the contract she claims is that early in their relationship Mr. Schwegmann said he wanted to "share everything" with her and that she said "okay." At the time of this conversation, Mr. Schwegmann owned a chain of supermarkets and other substantial assets and plaintiff owned nothing whatsoever. The claimed contractual agreement was never reduced to writing, and there were no witnesses to the alleged conversa-

tion.

Plaintiff claims that, on the basis of this "contract," she acted as a "wife" to Mr. Schwegmann, performed household services for him, helped to raise his daughter Margie Schwegmann, assisted him in his business and political careers, and gave him investment advice. Plaintiff ceased to live at Mr. Schwegmann's home in May 1978. He continued to make payments to her, and they continued to have intimate relations until she filed this suit in october 1979.

In addition to her claims based on the alleged oral contract, plaintiff requests recognition of a constructive trust on her behalf on one-half of Mr. Schwegmann's property, and compensation in quantum meruit for domestic and business services. She also prays for certain declaratory relief, for damages based

on interference with contract rights, and for a declaration that a sale of stock was a simulation. Ms. Blackledge claims that a partnership was created between herself and Mr. Schwegmann, and asks the Court to dissolve the partnership and distribute the assets.

We will discuss separately each of plaintiff's claims.

#### Oral Contract

Plaintiff requests specific performance of an oral contract between herself and Mr. schwegmann, or, alternatively, damages for breach of that contract. In her petition plaintiff alleges that she and Mr. Schwegmann agreed that they would "live together", that they would combine their skills, efforts, labor and earnings" and that they would "share equally any and all assets and property acquired and/or accumulated as the result

of said joint skills, efforts, labor and earnings." In her deposition plaintiff testified that she and Mr. schwegmann had a conversation after she moved into his house in which Mr. Schwegmann stated that he wished to "share everything" with her and she said "okay". She further testified that because of these words it was her understanding that she and Mr. Schwegmann were going to pool all of their assets, work together and share their assets. She specifically testified that the understanding between herself and Mr. schwegmann was never reduced to writing.

Defendants claim that no valid contract was every confected between plaintiff and Mr. Schwegmann for four independent reasons. First, the "contractual agreement" alleged by Miss Blackledge is a universal partnership, and is invalid

because it was not made in writing. Second, no contract was ever confected between Miss Blackledge and Mr. Schwegmann because under Louisiana Civil Code articles 1779(3) and 1886 the object of the alleged contract was not certain. Third, the alleged contract is not supported by adequate consideration; and fourth, the alleged contract is void because it is meretricious.<sup>1</sup>

The Court does not find it necessary to reach the last three arguments made by the defendants, because the Court finds that the contract plaintiff alleges would have been a universal partnership

---

<sup>1</sup> For reasons stated below, the testimony of the plaintiff leaves no doubt that the alleged contract was in fact meretricious. This fact alone would probably suffice to defeat the plaintiff's contract claim and many of the other claims that she asserts.

The Court does not find it necessary to reach the last three arguments made by the defendants, because the Court finds that the contract plaintiff alleges would have been a universal partnership which could not have been valid unless it had been made in writing.

Article 2829 of the Louisiana Civil Code, repealed in 1980, defined a universal partnership as follows:

Universal partnership is a contract by which the parties agree to make a common stock of all the property they respectively possess; they may extend it to all property real or personal, or restrict it to personal only; they may, as in other partnerships, agree that the property itself shall be common stock or that the fruits only shall be such; but property which may accrue to one of the parties, after entering into the partnership, by donation, succession or legacy, does not become common stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void.

Articles 2830 and 2831 contained the



following additional provisions relating to universal partnerships:

A universal partnership of profits includes all the gains that may be made from whatever source, whether from property or industry, with the restriction contained in the last article, and subject to all legal stipulations to be made by the parties.

If nothing more is agreed between the parties, than that there shall be a universal partnership, it shall extend only to the profits of the property each shall possess, and of their credit and industry.

The "contractual agreement" described in the plaintiff's petition fits exactly the codal definition of universal partnership. The plaintiff alleges that she and Mr. Schwegmann agreed that "they would combine their skills, efforts, labor and earnings and would share equally and and all assets and property acquired and/or accumulated as a result of said joint skills, efforts, labor and earnings." Indeed, Miss Blackledge asks in her prayer

that this Court determine that the conduct of the parties created a "partnership" that includes "all of the said assets and property", and asks that the "partnership" be dissolved.

Similarly, the "sharing" agreement described in Miss Blackledge's deposition testimony is plainly a universal partnership. Plaintiff stated it was her understanding that she and Mr. Schwegmann were going to pool all of their assets, work together, share the assets and share the fruits of their labors. Plaintiff clearly testified that the agreement was not reduced to writing.

Under the Civil Code, a universal partnership cannot be created "without writing signed by the parties, and registered in the manner hereafter prescribed." La. Civ. Code Art. 2834 (repealed by Acts 1980 No. 150). An unwritten

and unrecorded universal partnership has no effect, even as between the parties. Heatwole v. Stansbury, 212 La. 685, 33 So.2d 196 (1947); Lagarde v. Dabon, 155 La. 25, 98 So. 744 (1923).

It has been repeatedly held that Louisiana law does not recognize as a valid universal partnership an oral agreement between a man and woman who live together and agree to split certain properties standing in the name of one of them. Heatwole v. Stansbury, supra; Foshee v. Simkin, 174 So.2d 915 (La. App. 1st Cir. 1965); Chambers v. Crawford, 150 So.2d 61 (La. App. 2nd Cir. 1963); Succession of Davis, 142 So.2d 481 (La. App. 2nd Cir. 1962); Gadlin v. Deggs, 23 So.2d 704 (La. App. Or1. Cir. 1945).

Therefore, the Court holds that the oral contract alleged by the plaintiff is a universal partnership that is invalid

because not made in writing.

### Constructive Trust

Plaintiff claims damages based on a constructive trust she asks this Court to impose on one-half of Mr. Schwegmann's property. She asks the Court to recognize this trust because of a contract she says is implied by the fact that she and Mr. Schwegmann cohabited for twelve years. She claims that she had a "reasonable expectation and belief" that she and Mr. Schwegmann had an agreement, and that she had the greatest confidence and trust in Mr. Schwegmann. She relied on him to disclose their joint properties and divide them in an equal manner.

A constructive trust, or equitable lien, is commonly understood to mean the equitable imposition of a trust of lien on property because of a fiduciary relationship between the parties.

Even if the Louisiana Civil Code allowed the imposition of a constructive trust on property, which it does not, plaintiff has not established the fiduciary relationship that is at the heart of the concept of a constructive trust.

Moreover, in Louisiana not even a wife has a privilege on the property of her husband, even for her dotal or paraphernal funds received by him.

Friend v. Fenner, 2 La. Ann. 789 (1847).

Therefore, the Court refuses to impose a constructive trust on property for plaintiff's benefit.

#### Implied Contract

Miss Blackledge asks the Court to award her damages based on a theory of implied contract. She apparently takes the position that the fact that she and Mr. Schwegmann lived together, even though

without benefit of marriage, allows her a community-like interest in his property and the right to receive a form of quasi-alimony. What Miss Blackledge asks the Court, in essence, is to characterize her relationship with Mr. Schwegmann as a marriage, when in fact she and Mr. Schwegmann were never married to each other and neither of them ever believed they were married to each other. This the Court refuses to do.

Claims like the plaintiff's are not foreign to Louisiana courts. Louisiana law has defined a person in Miss Blackledge's position as a concubine, a woman who "occupies the position, performs the duties, and assumes the responsibilities of a wife, without the title and privileges flowing from a legal marriage." Purvis v. Purvis, 162 So.239, 240 (La. App. 2d Cir. 1935). Louisiana

terminology for the man with whom a concubine lives is "paramour".

A great body of jurisprudence has grown up confirming that concubines and paramours have no rights in each other's property. Jackson v. Hampton, 134 So.2d 114 (La. App. 2d Cir. 1961); Rochelle v. Hezeau, 15 La. Ann. 306 (1860). See also Mintz & Mintz Inc. v. Color, 250 So.2d 816 (La. App. 4th Cir. 1971) where no garnishment of a woman's wages could be had for the debt of her paramour) and Sims v. Matassa, 200 So. 666 (La. App. 1st Cir. 1941) (where no seizure of a woman's property could be accomplished to satisfy her paramour's debt).

The Fourth Circuit Court of Appeal recently refused to recognize a concubine as a surviving spouse in community and succinctly described Louisiana law: "The law could scarce be plainer:



a sharing of bed and table, for a night or for a lifetime, does not by itself constitute marriage." Succ. of Donahue, 389 So.2d 879, 880 (La. App. 4th Cir. 1980). See also Sesostris Youchican v. Texas & P. R. Co., 147 La. 1080, 86 So. 551 (1920); Foshee v. Simkin, supra.

Unmarried cohabitation does not give rise to property rights analogous to or the same as property rights of married couples. Concubines have no implied contract that affords them any rights in the property of their paramours. Plaintiff's claim to a portion of Mr. Schwegmann's property on the theory of an implied contract between them is denied.

#### Declaratory Relief

The plaintiff's claim for a declaratory judgment is merely a corollary of her claims for breach of contract and implied contract, and is dismissed with

these claims.

Quantum Meruit

Miss Blackledge alleges that, even if there was no contract between herself and Mr. Schwegmann, she is due compensation for the services she rendered to Mr. Schwegmann under the theory of quantum meruit. She requests payment for domestic services rendered in the Schwegmann household and for business services allegedly performed for defendants.

Recovery on the basis of quantum meruit is based on the idea that no one should be allowed to enrich himself at the expense of another. La. Civ. Code art. 1965. When one benefits from the labor of another, the law implies a promise to pay a reasonable amount for the labor, even in the absence of a specific contract. Bordelon Motors, Inc. v. Thompson, 176 So.2d 836 (La. App. 3rd

Cir. 1965).

a. Claim in Quantum Meruit for Domestic Services

Plaintiff claims that she rendered certain domestic services in Mr. Schwegmann's household including cooking, cleaning, chauffeuring, taking care of Mr. Schwegmann's daughter Margie, and acting as a nurse to him after his stroke. For these services she makes a claim for compensation on the basis of quantum meruit.

No recovery in quantum meruit can be had when the underlying agreement is illegal. As one Louisiana Court put it, "since the basis of quantum meruit is an implied contract to pay for services rendered, no recovery can be had where the contract implied is illegal." Jary v. Emmett, 234 So.2d 530, 531-32 (La. App. 3rd Cir. 1970). And an arrangement

wherein sexual services form an integral part is illegal. Guerin v. Bonaventure, 212 So.2d 459 (La. App. 1st Cir. 1968); Chambers v. Crawford, supra. Louisiana law clearly disallows claims by concubines in quantum meruit when the services rendered are intertwined with illegal cohabitation. In Guerin v. Bonaventure, 212 So.2d at 464-65, claims of a concubine in quantum meruit were denied because the services rendered were found indistinguishable from the relationship of concubinage:

In view of the parties living together as man and wife, it was only natural that plaintiff lend some assistance to the paramour who furnished full subsistence and a home for plaintiff and her child as if they were his lawful wife and offspring. In this manner plaintiff received full remuneration for services rendered to defendant Bonaventure in performing the duties of mistress of his household and some measure of assistance in his various business enterprises.

\* \* \*

All of the circumstances considered, the services rendered by plaintiff are so completely intertwined with her illegal cohabitation with Bonaventure as to be utterly indistinguishable therefrom. In such circumstances, the remuneration received in the form of support and subsistence over the years is in law deemed full remuneration therefor. Consequently she has filed to establish her right to legal remedy or redress.

The claim Miss Blackledge makes in quantum meruit for domestic services is inextricable from the relationship of concubinage between herself and Mr. Schwegmann. Miss Blackledge testified at her deposition that she and Mr. Schwegmann had sexual relations on their first date in October or November of 1958, that they had sexual relations throughout the time they dated, and that this was one of the reasons that Mr. Schwegmann paid her money. She testified that a part of her promise to Mr. Schwegmann was to "be a wife to him." She testified that

"John and I made all the commitments and agreements to each other that anyone would take when they got married." Miss Blackledge testified that she and Mr. Schwegmann had sexual relations regularly during the time she lived in his house.

It is clear that the performance of sexual services formed a part of the domestic arrangement between plaintiff and Mr. Schwegmann and also included other duties commonly performed by wives such as cooking and child care. Therefore, no recovery can be had by plaintiff in quantum meruit for domestic services because any domestic service she may have rendered is inextricably interwoven with the relationship of concubinage.

b. Claim in Quantum Meruit for Business Services

In addition to her claim in quantum meruit for domestic services,

plaintiff alleges that she rendered certain business services to defendants. Specifically she claims that she advised Mr. Schwegmann on management of his grocery stores, helped write editorials for Schwegmann newspaper advertisements, gave Mr. Schwegmann investment advice, and advised Mr. Schwegmann on his political career.

These services, if proved, may or may not be separate and distinct from the relationship of concubinage. Louisiana law has long held that a relationship of concubinage does not immunize a paramour from claims by a concubine who contributes a full share of capital for a joint business venture between them. Succession of Davis, supra; Delamour v. Roger, 7 La. Ann. 152 (1852). But it is only when those business arrangements are separate from the relationship of



concubinage that these claims will be recognized. In Guerin v. Bonaventure, 212 So.2d at 461, the court stated:

"Our jurisprudence appears settled to the effect that predicated upon equitable principles, the claims of a paramour and concubine will be recognized and enforced with respect to joint or mutual commercial ventures, provided such enterprises arose independently of the illicit relationship. Heatwold v. Stansbury, 212 La. 685, 33 So.2d 196; Sparrow v. Sparrow, 231 La. 966, 93 So.2d 232; Foshee v. Simkin, La. App., 174 So.2d 915.

The rationale of the rule pronounced in the Heatwold, Sparrow and Foshee cases, supra (and the numerous authorities therein cited) is that where the concubinage is merely incidental to the business arrangements, the equitable rights of both parties will be recognized and enforced provided they be established by strict and conclusive proof. Stated otherwise, the rule is that if the commercial enterprise is independent of the illegal cohabitation, each party may assert his rights in the common endeavor.

Thus, in order for a concubine to successfully assert a claim arising from a business transaction with her



paramour she must establish that the business services were independent of the concubinage and she must produce that evidence to a standard of strict and conclusive proof. Chambers v. Crawford, supra; Heatwole v. Stansbury, supra.

When real and substantial services have been performed by a concubine in the operation of a business or the purchase and sale of investment property that are separate and distinct from the relationship of concubinage, these business services can be compensated in quantum meruit upon a showing of clear and convincing evidence.

In considering the present motion for summary judgment, the Court must give the plaintiff every benefit of the doubt. The Court cannot, at this stage of the proceeding, completely rule out the possibility that the plaintiff could establish real and substantial

business services performed for defendants that have not been compensated and that are separate and distinct from the relationship of concubinage. Therefore the motion for summary judgment is denied with respect to the plaintiff's claim in quantum meruit for such services.

#### Interference with Contract Rights

No interference with plaintiff's contract rights has taken place because no contract exists with which defendants could interfere.

Furthermore, even if there were an action in Louisiana for interference with contract rights, it would be prescribed in this case, since interference with contract rights is a tort.

#### Simulation and/or Revocatory Action

In her claim for a declaration of a simulation and/or revocatory action, plaintiff avers that she is a creditor

of Mr. Schwegmann and asks that a sale of corporate stock by Mr. Schwegmann be declared null and void. However, for reasons stated above, plaintiff is not a creditor of Mr. Schwegmann and cannot bring an action in simulation or a revocatory action.

For these reasons, defendants' motion for summary judgment is granted dismissing all of plaintiff's claims, except that the Court denies the motion for summary judgment insofar as plaintiff seeks to recover in quantum meruit for the value of uncompensated services, if any, performed separate and apart from the relationship of concubinage, rendered by her in furnishing business assistance to the defendants.

Gretna, Louisiana

September 28, 1982

s/ Frank J. Zaccaria

J U D G E

A-31

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ON FILE IN THIS OFFICE

R. Martin  
Deputy Clerk  
24TH JUDICIAL DISTRICT COURT  
Parish of Jefferson, La.

**APPENDIX B**

APPENDIX "B"

MARY ANN SCHWEGMANN  
a/k/a MARY ANN  
BLACKLEDGE

NO. 83-CA-305

VERSUS

COURT OF APPEAL

JOHN G. SCHWEGMANN,  
JR., JOHN F. SCHWEGMANN,  
MELBA MARGARET  
SCHWEGMANN AND  
SCHWEGMANN BROS. GIANT  
SUPERMARKETS, INC.,  
SCHWEGMANN BROS. TER-  
MINAL, INC., SCHWEG-  
MANN BROS., INC.,  
SCHWEGMANN BROS.,  
WESTBANK, INC.,  
SCHWEGMANN BROS.  
WESTSIDE CORPORATION  
AND SCHWEGMANN VET-  
ERANS CORPORATION

FIFTH CIRCUIT

STATE OF  
LOUISIANA

APPEAL FROM THE TWENTY-FOURTH  
JUDICIAL DISTRICT COURT IN  
AND FOR THE PARISH OF JEFFERSON,  
STATE OF LOUISIANA, NUMBER 231-175,  
HONORABLE FRANK V. ZACCARIA, JUDGE

THOMAS J. KLIEBERT

JUDGE

(Court composed of Judges  
Thomas J. Kliebert, H. Charles  
Gaudin and Edward A. Dufresne, Jr.)

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Attorneys for Defendants-Appellees

NOV 9 1983

AFFIRMED AND  
REMANDED

This is a devolutive appeal by Ms. Mary Ann Blackledge, plaintiff, from a judgment dismissing, on a motion for summary judgment, all of the causes of action alleged in her petition against Mr. John G. Schwegmann, Jr. (hereafter Mr. Schwegmann), et al,<sup>1</sup> defendants, except the cause to recover in quantum meruit for the value of uncompensated services performed separate and apart from the relationship of concubinage.<sup>2</sup>

- 
1. Other defendants were Mr. Schwegmann's children, John F. Schwegmann and Melba Schwegmann, and various corporate entities through which Mr. Schwegmann's business affairs were conducted.
  2. In her brief, counsel for Ms. Blackledge urges arguments relative to the trial judge's dismissal of a motion to enforce an alleged settlement and a motion to disqualify the defendants' lawyers. These interlocutory orders were issued on the same date as the judgment on the motion for summary judgment. The plaintiff made no application for supervisory writs and her motion for appeal was



restricted to the judgment on the motion for a summary judgment, therefore, these orders are not before us on this appeal.

---

Ms. Blackledge asserts that the allegations of her petition raise six causes of action against the defendants: (1) Specific performance and/or damages based on breach of contract; (2) Recognition of constructive trust or damages based on implied contract; (3) Declaratory relief; (4) Quasi Contract and/or Quantum Meruit; (5) Interference with contract rights; and (6) Declaration of simulation and/or revocatory action. Additionally, though not an itemized cause, she asserts the existence of a partnership and prays for its dissolution and/or distribution of its assets.

Notwithstanding Rule 2-12-4 of the Uniform Rules for the Courts of Appeal, Ms. Glackledge's brief did not particular-

ize errors in the trial court judgment or specify issues on appeal. Rather, she argues that there are issues of fact and as a matter of law, her petition contains valid causes of action; hence, the motion to summarily dismiss her claims was error. We disagree and affirm the judgment of the trial court.

The petition alleged a contract entered into by Ms. Blackledge and Mr. Schwegmann in May, 1966, whereby they agreed to live together and, while doing so, combine [sic] their skills, efforts, labor and earnings and to share equally any and all assets and property acquired and accumulated as a result of their joint skills, efforts, labor and earnings. The horns of the legal dilemma upon which the petition places her is apparent from her testimony given by deposition. As facts are elicited to show the confection

of an agreement, the nature of the services or their value, the same facts establish that the alleged agreement, if in fact proven, is meretricious and, therefore, void.

Ms. Blackledge claims she and Mr. Schwegmann lived together, without marriage, for twelve years pursuant to an oral agreement. The agreement, according to her, was confected in 1966 when Mr. Schwegmann told her he wanted to "share everything" with her and she said "okay". At the time of this conversation, Mr. Schwegmann was a twice divorced, middle age, male who owned a chain of supermarkets and other assets, and Ms. Blackledge was a 24 year old unmarried female who had no property or other financial assets. The claimed contractual agreement was never reduced to writing and there was no witness to the alleged conversation

in which it was confected.

Following the confection of the alleged contractual agreement, Ms. Blackledge and Mr. Schwegmann lived together continuously from May 1966 to May 1978. In this time frame, Ms. Blackledge contends she rendered services as a companion, housekeeper and cook, as well as a mother to Mr. Schwegmann's children, and as a business advisor, political assistant and confidante to him and his controlled corporations.

Throughout the time they lived together, Ms. Blackledge and Mr. Schwegmann had sexual relations on a regular basis. Ms. Blackledge's living expenses, dental and medical bills, clothing costs, entertainment and traveling expenses were paid for by Mr. Schwegmann. He also provided her with a monthly allowance check during their cohabitation and continued the checks

after they ceased living together until the time this suit was filed. The sexual relationship also continued during visits after the cohabitation had terminated.

In the absence of specific assignments of error or issues, we will discuss each of the asserted causes of action (itemized above as [1] thru [6]) under the captions indicated below.

#### BREACH OF CONTRACT

Since the issue arises on a motion for summary judgment, we did not need to and made no determination as to whether the so-called contract alleged in the petition and testified to by Ms. Blackledge was in fact proven. Rather, for the purpose of this motion, we consider the facts alleged in the petition, as expanded on and amplified in the depositions as true.

Counsel for Ms. Blackledge prays

for specific performance of the alleged oral contract or alternatively damages for breach of the contract. The defendants contend no valid contract could be con-  
fected because (1) the alleged "contractual agreement" is a universal partnership and consequently invalid because it is not in writing; (2) the object of the alleged contract was not certain, hence, it violates the requirements of La. C.C. Articles 1179(3) and 1886; consequently no contract was conected; (3) the alleged contract is not supported by adequate consideration; and (4) the alleged contract is void because it is meretricious. The trial judge ruled on only the first and last of defendants' contentions, thus negating the necessity of his considering the others.

A universal partnership is de-

fined by La. C.C. Article 2829<sup>3</sup> as follows:

"Universal partnership is a contract by which the parties agree to make a common stock of all the property they respectively possess; they may extend it to all property real or personal, or restrict it to personal only; they may, as in other partnerships, agree that the property itself shall be common stock or that the fruits only shall be such; but property

- 
3. Title XI of Book III of the Louisiana Civil Code of 1970 OF. Partnership, previously consisting of Articles 2801 to 2890, was revised, amended and re-enacted by Acts 1980, No. 150, effective January 1, 1981. ARTicles 2829 thru 2834, concerning a universal partnership, which were in effect at the time th[sic] alleged agreement was confected and this suit was filed, were repealed by Act 150 of 1980.

which may accrue to one of the parties, after entering into the partnership, by donation, succession or legacy, does not become common stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void."

and expanded on in the two subsequent articles as follows:

Art. 2830. A universal partnership of profits include all the gains that may be made from whatever source, whether from property or industry, with the restriction contained in the last article, and subject to all legal stipulations to be made by the parties.

Art. 2831. If nothing more is agreed between the parties, than



that there shall be a universal partnership, it shall extend only to the profits of the property each shall possess, and of their credit and industry.

As found by the trial judge, the contractual agreement alleged in the petition "fits exactly the codal definition of universal partnership". Ms. Blackledge testified she and Mr. Schwegmann were going to pool all of their assets and share the fruits of their labor, thus clearly asserting an intention to confect a partnership. Indeed, among others, the plaintiff's petition asks the court to consider the conduct and agreement of the parties as a partnership and prays for its dissolution and the distribution of its assets to the partners.

Under the provisions of La. C.C. Article 2834, a universal partnership

cannot be created "... without a writing signed by the parties ..." Hence, Louisiana does not recognize as a valid universal partnership an oral agreement between a man and a woman who live together and agree to split certain properties standing in the name of one of them.

Heatwole v. Stansbury, 212 La. 685, 33 So.2d 196 (1947); Foshee v. Simkin, 174 So.2d 915 (1st Cir. 1965); Chambers v. Crawford, 150 So.2d 61 (2nd Cir. 1963); Gadlin v. Deggs, 23 So.2d 704 (4th Cir. 1945).

Ms. Blackledge testified her alleged understanding or agreement was not reduced to writing. Therefore, under the jurisprudence above cited, the trial court held the oral contract alleged by the plaintiff, even if proven, would be a universal partnership and, as such, invalid because not made in writing.

In her brief on appeal, counsel for Ms. Blackledge states "historically concubinage cases have couched the agreement as a universal partnership"; but then argues "there is no statutory reason why the courts began to apply partnership law to any oral contract". Consequently, "there is no explanation [why] within the body of concubinage law except that the goals of the parties were joint and the state is a community property state". We suggest the explanation is found in the fact that the community of acquets and gains created by the marriage is legally considered a partnership between the partners in the marriage.

In most concubinage cases, as is the case here, the goal of the plaintiff is to obtain for the concubine the civil benefits which would flow to the wife as a marital partner. In the absence of the

marriage, some relationship, other than a sexual one, must exist between the parties for the civil benefits to flow to the person acting as the pseudo wife. Consequently, it is logical for the concubine's counsel to urge a partnership akin to the community of acquets and gains which applies to marital partners and for the court to apply partnership law in denying it.

As argued by counsel for Ms. Blackledge, it was theoretically and legally possible for the parties to establish a commercial or some partnership other than a universal partnership. However, the facts are that under the allegations of the petition and the testimony of Ms. Blackledge the relationship created was that of a universal partnership, not some other type. Additionally, this court cannot lose tract of reality. Although

it was theoretically and legally possible for the parties to marry and thus create a legal partnership based on a sexual relationship, the facts here are that the parties did not marry. Hence, as subsequently pointed out in this opinion - however the relationship is catagorized - under the law the alleged agreement is meretricious one and therefore void. For the same reason, applying the present partnership articles of the Civil Code (which do not require the partnership to be in writing) would not produce the results desired by the plaintiff.

Accordingly, we uphold the trial judge's ruling that the alleged oral agreement asserted by Ms. Blackledge would be a universal partnership and thus be invalid because not made in writing. Further, even if the alleged agreement was not required to be in writing, it would be unen-

forceable because it is a meretricious one. Hence, except as we hereafter expand on the concept of a meretricious agreement under the caption Quantum Meruit, it is unnecessary for us to consider the other grounds urged by the defendants as defense to the plaintiff's claim for breach of an alleged contract.

RECOGNITION OF CONSTRUCTION  
TRUST OF DAMAGES BASED ON  
IMPLIED CONTRACT

Ms. Blackledge contends the fact she and Mr. Schwegmann lived together as man and wife for twelve years caused a contract to be implied between them. On the basis of this implied contract she asserts the creation of a constructive trust for her benefit over the joint assets held by Mr. Schwegmann or alternatively the right to recover damages based on his breach of the "implied contract". She argues the constructive trust is im-

posed as an equitable remedy to protect her interest in the joint properties because she had a "reasonable expectation and belief" she and Mr. schwegmann had an agreement and she had the greatest confidence and trust he would carry out the agreement.

The legal concept for a constructive trust is to impose an equitable lien on property because of a fiduciary relationship between the parties. The heart and soul of the equitable lien is a fiduciary relationship. Neither in the pleadings nor in the deposition of Ms. Blackledge is there established the requisite fiduciary relationship. Further, it is clear the Louisiana Civil Code prohibits the imposition of a constructive trust on property. Succession of Onorato, 219 La. 1, 51 So.2d 804 (1951); In re Liquidation of Canal Bank & Trust Co.,

181 La. 856, 160 So. 609, 616 (1935); see also Mansfield Hardwood Lumber Company v. Johnson, 268 F.2d 317 (5th Cir. 1959); In re Hagin, 21 F.2d 434, 437 (E.D. La. 1927), aff'd sub nom, Phoenix Bldg. & Homestead Ass'n v. E. A. Carrere's Sons, 33 F.2d 563 (5th Cir. 1929); Bankhead v. Maryland Casualty Company, 197 F. Supp. 879 (E.D. La. 1961).

Her theory for recovery under an implied contract requires the characterization of her relationship with Mr. Schwegmann as a marriage, when in fact they were never married and neither of them ever believed they were married to each other. As a matter of fact, Ms. Blackledge testified she knew Mr. Schwegmann had a marriage contract (against formation of a community of acquets and gains) with his second wife because, as she stated, "he wanted the property protected



in the event of a divorce".

In oral arguments and in appellant's briefs, counsel for plaintiff strenuously urges the novelty of the relationship and importance of her case in a changing society. The trial judge rejected the argument and gave excellent legal written reasons for doing so. Therefore, we adopt his reasons which follow as our own:

"Claims like the plaintiff's are not foreign to Louisiana courts. Louisiana law has defined a person in Miss Blackledge's position as a concubine, a woman who 'occupies the position, performs the duties, and assumes the responsibilities of a wife, without the title and privileges flowing from a legal marriage.' Purvis v. Purvis, 162 So. 239. 240 (La. App. 2d Cir. 1935). Louisiana terminology for the man with whom a concubine lives is 'paramour'.

A great body of jurisprudence has grown up confirming that concubines and paramours have no rights in each other's property. Jackson v. Hampton, 134

So. 2d 114 (La. App. 2d Cir. 1961); Rochelle v. Hezeau, 15 La. Ann. 306 (1860). See also Mintz & Mintz, Inc. v. Color, 250 So.2d 816 (La. Appl. 4th Cir. 1971) (where no garnishment of a woman's wages could be had for the debt of her paramour) and Sims v. Matassa, 200 So. 666 (La. App. 1st Cir. 1941) (where no seizure of a woman's property could be accomplished to satisfy her paramour's debt).

The Fourth Circuit Court of Appeal recently refused to recognize a concubine as a surviving spouse in community and succinctly described Louisiana law: 'The law could scarce be plainer: a sharing of bed and table, for a night or for a lifetime, does not by itself constitute marriage.' Succ. of Donohue, 389 So.2d 879, 880 (La. App. 4th Cir. 1980). See also Sesostri Youchican v. Texas & P. R. Co., 147 La. 1080, 86 So. 551 (1920); Foshee v. Simkin, supra."

A substantial portion of the plaintiff counsel's brief is devoted to a historical analysis of the Louisiana Law on concubinage to show that its development was predicated on public policy construed by the judiciary. She then

argues that changes in the mores of society as regards cohabitation have changed so radically, we should not impose on a man and woman who cohabit without marriage a standard based on moral considerations merely to protect Victorian values which have been abandoned by so many in our society. Therefore, she urges it is time for the courts of Louisiana to develop a legal vehicle to protect the property rights obtained during cohabitation by a male and female in a sexual relationship without benefit of marriage. In support of the contentions, she urges a constitutionally protected right against discrimination between wives and concubines. She compares the discrimination she sees to that formerly existing between legitimate and illegitimate children and says concubinage discriminates against black heritage and culture but more particularly

against women.

We neither agree with her appreciation of the sociological changes nor the necessity for a change in legal philosophy as to concubinage nor do we see the violation of a constitutionally protected right against discrimination. The State has valid reason to discourage relationships which serve to erode the cornerstone of society, i.e., the family. In every known civilized society, replacement of its members is performed within the context of the family. Although it is conceivably possible that sexual relations and child rearing could be deregulated or governed by norms that do not entail the encouragement, support and protection of family institutions, past experiments in that direction have failed. (See "The Attempt to Abolish the Family in Russia" in The Great Retreat by Nicholas S.

Timasheff, Copyright 1946 by E.P. Dutton & Co., Inc. Further, in the case of the children, legitimate or illegitimate, they were not the cause of their status, but here the status of concubine was a voluntary and desired one, for the parties neither married, wanted to marry, nor believed they were married.

Under present Louisiana law, unmarried cohabitation does not give rise to property rights analogous to or similar to those of married couples. Concubines have no implied contract or equitable liens that afford them any rights in the property of their paramours. Moreover, in our view, although Victorian, the values sought to be protected by the formulation of those legal concepts are imperative if we are to maintain our civilized society.

#### QUASI CONTRACT AND QUANTUM MERUIT

The plaintiff asserts a right

to recover compensation for the services rendered to Mr. schwegmann under a quasi contract or quantum meruit theory. Under our law, when one benefits or is unjustly enriched from the labor of another, the law implies a promise to pay a reasonable amount for the labor, even in the absence of a specific contract. La. C.C. Article 1965. Bordelon Motors, Inc. v. Thompson, 1976 So.2d 836 (3rd Cir. 1965).

Here Ms. Blackledge testified that she rendered domestic services and business services and here claims compensation for both. Since the trial court and we reached conclusions based on the nature of the services, we consider each category of services separately.

#### Domestic Services

Ms. Blackledge stated in her deposition that she performed domestic services including cooking, cleaning,

chauffering, taking care of Mr. Schwegmann's daughter, and acting as a nurse to him after his stroke. She also stated that she and Mr. Schwegmann had sexual relations: (1) on their first date in October or November of 1958; (2) throughout the time they dated before living together; (3) while they lived together in his house; and (4) when she visited after she left his house, and that this was one of the reasons Mr. Schwegmann paid her money. In describing her alleged agreement with Mr. Schwegmann, she testified that part of her promise was to "be a wife to him" and that "John and I made all the commitments and agreements to each other that anyone would take when they got married". She understood a condition of the agreement to be that while they lived together neither of them would have sexual relations with anyone else.



Clearly from her testimony, the domestic services of child care, nursing, cooking, etc., were inextricably interwoven with sexual services in a concubinage relationship. Louisiana law clearly disallows claims in quantum meruit by concubines for domestic services when the services are interwoven with sexual relationship.

From early in Louisiana law, where parties to a contract cohabit in a sexual relationship and their agreement to cohabit is part of the basis for the agreement between them, the agreement is unenforceable because it is an unlawful contract for meretricious services.

Delamour v. Roger, 7 La. Ann. 152 (1852).

See also La. C.C. Article 1892; Sparrow v. Sparrow, 231 La.966, 93 So.2d 232 (1957); and Foshee v. Simkin, 174 So.2d 915 (1st Cir. 1965) for more recent cases.

More recently, the First Circuit



Court of Appeal in Guerin v. Bonaventure,  
212 So.2d 459 (1st Cir. 1968) at pages  
464-65 denied the claims of a concubine  
in quantum meruit in the following language:

"in view of the parties living together as man and wife, it was only natural that plaintiff lend some assistance to the paramour who furnished full subsistence and a home for plaintiff and her child as if they were his lawful wife and offspring. In this manner plaintiff received full remuneration for services rendered to defendant Bonaventure in performing the duties of mistress of his household and some measure of assistance in his various business enterprises.

★ ★ ★

All of the circumstances considered, the services rendered by plaintiff are so completely intertwined with her illegal cohabitation with Bonaventure as to be utterly indistinguishable therefrom. In such circumstances, the remuneration received in the form of support and subsistence over the years is in law deemed full remuneration therefor. Consequently she has failed to establish her right to legal remedy or redress."

Clearly, the plaintiff here has no valid cause of action to recover in quantum meruit for the domestic services she claims to have rendered for by her own testimony the domestic services were inextricably interwoven with the sexual relationship.

#### Business Services

Plaintiff testified she performed business services for Mr. Schwegmann and his corporations by (1) helping him write editorials for Schwegmann's newspaper advertisements; (2) rendering investment advice; (3) assisting and rendering advice as to Mr. Schwegmann's political career; and (4) keeping him informed of things she saw in the stores which could have an adverse effect on the business. Under our law, the plaintiff may be entitled to compensation for the rendition of the services if the services

were in fact rendered and do meet the pre-requisites of the equitable principles formulated by the jurisprudence for recovery. In the Bonaventure case, supra, the Third Circuit clearly stated the equitable principles upon which recovery can be had:

"Our jurisprudence appears settled to the effect that predicated upon equitable principles, the claims of a paramour and concubine will be recognized and enforced with respect to joint or mutual commercial ventures, provided such enterprises arose independently of the illicit relationship. Heatwole v. Stansbury, 212 La. 685, 33 So.2d 196; Sparrow v. Sparrow, 231 La. 966, 93 So.2d 232; Foshee v. Simkin, La. App., 174 So.2d 915.

The rationale of the rule pronounced in the Heatwole, Sparrow and Foshee cases, supra (and the numerous authorities therein cited) is that where the concubinage is merely incidental to the business arrangement, the equitable rights of both parties will be recognized and enforced provided they be established by strict and conclusive proof. Stated otherwise, the rule is that if the commercial enterprise

is independent of the illegal cohabitation, each party may assert his rights in the common endeavor."

Since the issue arose on a motion for summary judgment the trial judge concluded and we agree the plaintiff must be given every benefit of the doubt. Conceivably given the opportunity to do so, she could establish real and substantial business services performed for the defendants, including Mr. Schwegmann, that have not been previously compensated and which were separate and distinct from the concubinage relationship. Accordingly, we agree with the trial judge's ruling excepting her claim of compensation for business services from the summary dismissal of her claims.

#### OTHER ASSERTED CAUSES OF ACTION

In addition to those discussed above, the plaintiff in her petition as-

asserted that (1) she was entitled to a declaratory relief because an actual controversy has arisen between her and the defendants relative to her legal rights; (2) the defendants other than Mr. Schwegmann have interfered with the contractual rights she obtained through her agreement with Mr. Schwegmann, and (3) she is a creditor of the defendant Mr. Schwegmann and his purported sale of the stock of his controlled corporations to his son was a simulation or in fraud of her rights as a creditor and consequently should be revoked. The trial judge rejected her contentions on the grounds the request for declaration relief and the claim for interference with her contractual rights are collaries to her claim for breach of contract or implied contract and falls for the same reasons those asserted claims fell. Additionally, he rejected the claims

in simulation or revocation because the plaintiff was not a creditor of Mr. Schwegmann. Counsel for the plaintiff makes little or no direct comment relative to these rulings in her brief. In our view, the trial judge's ruling was proper.

#### CONCLUSION

After a careful review of the record, the arguments of counsel and the trial judge's ruling, we cannot say the trial judge erred in his findings, his rulings or in his determination and application of the laws of Louisiana to the record before us. Paramount in the review of the petition is the recognition it was molded in conformity with the distinctions drawn by the Supreme Court of the State of California in Marvin v. Marvin, 557 P. 2d 106 (Calif. 1976). But also paramount in the review of the plaintiff's

deposition is the recognition that her testimony does not produce a factual setting consistent with the allegations of the petition. Furthermore, we do not believe the prevalence and social acceptance of non-marital sexual relationship at this time is justifiable grounds to abandon the Louisiana concept of the unlawfulness of a concubinage relationship.

To equate the non-marital relationship of concubinage to a marital relationship is to do violence to the very structure of our civilized society. Without the family, the State cannot exist and without marriage the family cannot exist. Thus, aside from religious or moralistic values, the State is justified in encouraging the legitimate (marriage) over the illegitimate (concubinage), for to do otherwise is to spread the seeds of destruction of the civilized society.



Unwed cohabitators involved in concubinage relationships have voluntarily chosen not to marry and they should not expect to receive the civil effects flowing by virtue of a marital state. In the absence of ceremonial marriage, in order to discourage the relationship, the State has not established, for a male and female who cohabit, statutory obligations of fidelity, support and assistance, nor a statutory recognition of a right to support or to assistance upon termination of the relationship. As the Louisiana courts have previously stated, discouraging the establishment of a sexual relationship without ceremonial marriage is in the interest of protecting the moral fabric of society and its preservation against those who flaunt its standards and values.

See Succession of Battiste, 145 So.2d 668 (4th Cir. 1962) and Texada v. Spence, 166



La. 1020, 118 So. 120 (1928).

Accordingly, the judgment of the trial court is affirmed and the case remanded to the trial court to proceed on the merits of the plaintiff's claim for compensation for business services. All costs of the appeal to be borne by the plaintiff.

AFFIRMED  
AND  
REMANDED

83 - 1630

No. \_\_\_\_\_

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**FILED**  
**APR 4 1984**

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**IN THE  
SUPREME COURT  
OF THE UNITED STATES**

October Term, 1983

MARY ANN SCHWEGMANN a/k/a  
MARY ANN BLACKLEDGE,

Appellants,

vs.

*John G. Schwegmann, Jr. et al.*  
~~SUPREME COURT OF THE  
STATE OF LOUISIANA,~~

Respondents

**PETITION FOR WRIT OF CERTIORARI**

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## APPENDIX C

APPENDIX "C"

SUPREME COURT OF THE STATE OF LOUISIANA

NUMBER: 83 C 2500

MARY ANN BLACKLEDGE,  
a/k/a MARY ANN SCHWEGMANN

PLAINTIFF-APPELLANT

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL.

DEFENDANT-APPELLEE

PETITION FOR WRIT OF CERTIORARI AND REVIEW

SUPREME COURT OF LOUISIANA  
FILED DEC. 9 1983

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SUPREME COURT OF THE  
STATE OF LOUISIANA

NUMBER:

MARY ANN BLACKLEDGE,  
a/k/a MARY ANN SCHWEGMANN

VERSUS

JOHN G. SCHWEGMANN, JR., ET AL  
PETITION FOR WRIT OF CERTIORARI AND  
REVIEW

The petition of Mary Ann Blackledge, a/k/a Mary Ann Schwegmann was dismissed on a motion for summary judgment brought by the defendants, John G. Schwegmann, Jr., et al, in the 24th Judicial District Court in case number 231-175, Division "B", the Honorable Frank J. Zaccaria. The judgment signed on the 13th day of September, 1982 was appealed to the Fifth Circuit Court of Appeals and a judgment rendered by the Fifth Circuit on November 9, 1983 upholding the judgment of the

lower court. No motion for re-hearing was filed and plaintiff appeals to the Supreme Court for a writ of certiorari and review of the judgment.

### JURISDICTION

This Honorable Court has jurisdiction over this matter pursuant to Article 5, Section of the Louisiana Constitution.

### STATEMENT OF THE CASE

Both the lower court and the Fifth Circuit Court of Appeal addressed the issue of the contractual rights as between a concubine and a paramour.

The Court held that it is in the best interest of the State to continue to deny individuals who live together and who contract any remedy in Court. This case comes to the Louisiana Supreme Court whereby the oral contract as between Mary Ann Blackledge, a/k/a Mary

Ann Schwegmann and defendant is accepted as valid as are all other allegations in the pleadings. The Court then goes on to disallow the contract by classifying it as a universal contract (a partnership term which no longer exists in the present partnership law.)

Most importantly the Fifth Circuit Court of Appeals has upheld the "unlawfulness of a concubinage relationship" and has denied a concubine access to and legal remedies which would be available to other members of society. Had Mary Ann Blackledge, a/k/a/ Mary Ann Schwegmann contracted with John G. Schwegmann, Jr. and not ever had "sex" with him, she would have her day in Court under all legal theories that would give rise to causes of action as between the parties. Mary Ann Blackledge, a/k/a



Mary Ann Schwegmann is not attempting to raise her status to the of a legal wife. She and John G. Schwegmann, Jr. never believed they were married nor does she have any of the ancillary succession or alimony rights accorded to a legal wife.

The courts of Louisiana based on a case by case development of the law have determined that the moral fabric of society would be destroyed by recognizing that men and women live together without the benefit of marriage have, have children and structure their lives around that relationship as a primary relationship. Further, the courts by virtue of the parties status refuse to recognize any legal contracts that the parties may have made as between themselves. The Courts also refuse to rectify a situation when one party is enriched and another

party is improvised.

Plaintiff's case was thrown out of Court because she and John G. Schwegmann, Jr. had a meritorious relationship preventing the Court for ascertaining the merits of the case. Since there are no presumption nor rights created by the law, each case would stand on the facts of that case and the applicable law of the State.

Can the State under any conceivable moral justification refuse to give litigants a day in Court? Because of the economic development in the State, most of the business ventures and money matters were handled by the male paramour and therefore the male paramour was not economically punished in the same way as the concubine.

Plaintiff seeks that the Supreme Court

of the State of Louisiana review the law vis-a-vis a concubine and paramour and review the decision of the Fifth Circuit Court of Appeal.

The facts of the case are:

Plaintiff began working at the Schwegmann Stores and more particularly the Airline store in 1958 when she was 17 years old (Plaintiff's deposition Vol. I pp. 86). She later worked at other jobs in the stores (Plaintiff's deposition, Vol. 1, pp. 87). Plaintiff quit her job at the Schwegmann store when she began work at the Shell Oil Company in 1960, where she worked until 1965 (Plaintiff's deposition, Vol. I, pp. 88). Her job at Shell Oil Company was in the oil and gas department (Plaintiff's deposition, Vol. I pp. 163). Plaintiff would leave her job at Shell Oil Company

and meet John G. Schwegmann, Jr. after work at one of the Schwegmann stores, usually the Airline store. At that time she began evaluating the work done at the Schwegmann store for defendants and reviewed same with John G. Schwegmann, Jr. (Plaintiff's deposition, Vol I pp. 163-175). This continued for a period of approximately five years between 1960 and 1965.

Defendant, John G. Schwegmann, Jr., and Mary Ann Blackledge, a/k/a Mary Ann Schwegmann, had many businesses and business ventures which they were involved in over a twenty-one (21) year time period.

The parties contracted in May of 1966. They reaffirmed and modified their contract in July of 1966. The parties contracted to live together and to share

everything. From May and July of 1966 plaintiff upheld her part of the contract by living with defendant until he asked her to leave (Plaintiff's deposition, Vol. II pp. 211-220). During the time period she lived with John G. Schwegmann, Jr., she complied with the contract.

Plaintiff and defendant, John G. Schwegmann, Jr., developed a business of real estate development and speculation before they contracted. (Plaintiff's deposition, Vol. 1 pp. 164-184). That continued after their contract.

During the time period they were dating, she and John G. Schwegmann, Jr. always discussed real estate speculations. John G. Schwegmann, Jr. was an astute business man who was involved in many real estate acquisitions (see attachment to opposition to the motion for summary

judgment drawing accting sheets real estate taxes 1967 - 1978 Exhibit H).

Plaintiff stated that she was asked and did give advice to the defendant on real estate ventures before she and John G. Schwegmann, Jr. contracted in 1966 (Plaintiff's deposition, Vol. 1 pp. 164-195). After the contract between Mary Ann Blackledge, a/k/a/ Mary Ann Schwegmann, she was asked by defendant and gave advice on the real estate ventures between 1966 and 1978; some of those ventures were the Georgia/Pacific and ancillary land in St. Charles Parish, Powers Drive, Tall Timbers, Crowder Road, and Bullard Road (Plaintiff's deposition, Vol. I pp. 164-180). Plaintiff, defendant, John G. Schwegmann, Jr., and his sister participated in a real estate venture involving 6.6 acres

of land where they bought and sold property for speculation (Plaintiff's deposition, Vol. 1 pp. 185). This transaction took several years to complete but was completed in 1978 and the money was distributed in 1978. John Charbonnet was the attorney who represented Mary Ann Blackledge, a/k/a Mary Ann Schwegmann, in this real estate transaction (Plaintiff's Deposition Vol. IV pp. 488 - 517) and received a fee for his representation. Mary Ann Blackledge, a/k/a Mary Ann Schwegmann, also asked John G. Schwegmann, Jr. to purchase property at the Roosevelt location (Plaintiff's Deposition Vol. I pp. 185).

Mary Ann Blackledge, a/k/a Mary Ann Schwegmann, contracted that she would live with John G. Schwegmann, Jr. and they would share everything. After 1966,



until the contract terminated, which would be at one of the parties death, (Vol. VII pp. 805).

John G. Schwegmann, Jr. agreed that at the moment she contracted, she would receive one-half of all of John G. Schwegmann, Jr.'s net assets.

John G. Schwegmann, Jr. and Mary Ann Blackledge, a/k/a Mary Ann Schwegmann agreed thereafter to share all other net assets accumulated during the time they lived together.

Plaintiff and defendant did not believe they were legally married nor did plaintiff and defendant ever go through a wedding ceremony (Plaintiff's deposition Vol. II pp. 255-261). Plaintiff and defendant, from time to time, held themselves out to be Mr. and Mrs. John G. Schwegmann, Jr., due to 3rd parties

assumptions, his political career and because of their affection for one another. (Plaintiff's deposition Vol. II pp. 252 - 262). Defendant told plaintiff that he was frightened of ever marrying again because he had driven his other wives crazy (Plaintiff's deposition Vol. II pp. 255). The parties lived in a common-law marriage.

Defendant did many things in compliance with the contract.

In 1977, Defendant stated that one-half of the sale of the St. Charles property was hers, and stated that all money derived from the anti-trust litigation, as regards the wholesale liquor business, commenced by Stone, Pigman, Walther, Wittman & Hutchinson would be used by them to travel and continue their real estate speculations and that one-half of

it belonged to her. It is unknown to plaintiff, what happened to all the money derived from the settlement of anti-trust suits and the St. Charles property.

In addition to the proceeds of the anti-trust suit, John G. Schwegman, Jr. agreed that after the sale of the property next to the Schwegmann store terminal that the proceeds would be placed in a Certificate of Deposit and used by both parties (Plaintiff's Deposition Vo. I pp. 181-183).

John G. Schwegmann, Jr. gave money to plaintiff before the contract in 1966 (Plaintiff's deposition Vol. I pp. 216). After the contract, Mary Ann Blackledge a/k/a Mary Ann Schwegmann received money on a month by month basis, ranging from \$150.00 per month to \$1000.00 per month (Exhibit H). She received two houses from John G. Schwegmann, Jr. during the

contract (Plaintiff's deposition Vol. IV pp. 447-453). Plaintiff also received gifts from John G. Schwegmann, Jr. from 1966 to 1978 (Plaintiff's deposition Vol. IV pp. 438-446).

John G. Schwegmann, Jr. bought Mary Ann Blackledge a/k/a Mary Ann Schwegmann a mercedes which is not in her possession (Plaintiff's deposition Vol III pp. 491 - 487). After he asked her to leave in 1978, he continued to pay her at least \$500.00 per month and from June through October 1979 \$1000.00 per month in recognition of the contract (Plaintiff's deposition Vol. III pp. 438-451 Exhibit H).

Mary Ann Blackledge, a/k/a Mary Ann Schwegmann did the following to comply with the contract:

Mary Ann Blackledge, a/k/a Mary Ann

Schwegmann advised John G. Schwegmann, Jr. and board members of the corporations companies regarding (1) salaries of employees; (2) policy decisions; (3) design, planning and building of the Schwegmann stores built after 1966; (4) the day to day operations of the stores. She spoke to the managers of the defendant stores and compared prices for the defendant stores (Plaintiff's deposition Vol. III, pp. 343-389), and wrote editorials contained within the advertisements run by the defendant stores on a weekly basis (Plaintiff's deposition Vol. IV pp. 539).

John G. Schwegmann, Jr. sold all of his interest in the Schwegmann stores property to John F. Schwegmann which was done to the detriment to plaintiff's equitable ownership rights.

Mary Ann Blackledge, a/k/a Mary Ann Schwegmann took care of all household tasks at the Green Acres Road house and at other places, depending on where the parties were at the time.

During the time Mary Ann Blackledge, a/k/a Mary Ann Schwegmann and John G. Schwegmann, Jr. lived together, she took care of his daughter, Margie Schwegmann, for 13 years (from 1966 to 1978) (Plaintiff's deposition Vol. II pp. 247) and later cared for defendant during a long protracted illness (1977-1978) from which he has never recovered (Court proceedings, Testimony of Doctors). Plaintiff contributed all of her money back into the joint effort between 1966 and 1978.

Mary Ann Blackledge, a/k/a Mary Ann Schwegmann gave advice on real estate

speculations and purchases and supported defendant's political career and other business interests which were ancillary to his primary business.

After defendant's (John G. Schwegmann's Jr.) stroke in 1977 which hampered the business endeavors of both parties. From the time of Mr. Schwegmann, Jr.'s 1st stroke until Mary Ann Blackledge, a/k/a Mary Ann Schwegmann left the Green Acres Rd. house, she took care of all of defendant's needs. The defendants, John F. Schwegmann, Margie Schwegmann and the entities comprising the Schwegmann stores, asked plaintiff to confine and dedicate all her activities to defendant, John G. Schwegmann, because of his health problems. Both parties limited their travel, their life styles, and their business interests after 1977 to accommodate defendant's physical limitations. All other



All other defendants had a fiduciary responsibility to plaintiff and to defendant to maintain plaintiff's contractual interest in the joint business accumulated by plaintiff and John G. Schwegmann, Jr..

Mary Ann Blackledge, a/k/a Mary Ann Schwegmann accepted these limitations on their business endeavors and continued to live with and care for him under the terms and conditions of her contract until 1978.

Defendant, John F. Schwegmann, personally acknowledged the oral contract between his father and plaintiff contracted in 1966 (Plaintiff's deposition No. IX pp. 1054-1060).

Defendants, the Schwegmann businesses, acknowledged the oral contract between John G. Schwegmann, Jr. and plaintiff

contracted in 1966 (Plaintiff's deposition Vol. IX pp. 1054-1060).

Defendant, John G. Schwegmann, Jr. accepted and was enriched by the work of the plaintiff and is indebted to her in an amount to be determined by the Court.

Defendant, John F. Schwegmann, accepted and was enriched by the work of the plaintiff and is indebted to her in an amount to be determined by the Court.

Defendant, Margie Schwegmann, accepted and was enriched by the contract of the plaintiff and is indebted to her in an amount to be determined by the Court.

Defendants, the Schwegmann businesses, accepted and were enriched by the contract of the plaintiff and are indebted to her in an amount to be determined by the Court.

All defendants had a fiduciary responsibility to plaintiff and defendant to protect their property during the time period that John G. Schwegmann, Jr. was ill and she was caring for him. Defendants also have a fiduciary responsibility to plaintiff after May of 1978 when she was asked to leave John G. Schwegmann, Jr..

All defendants are indebted to plaintiff as the only value of assets received by Mary Ann Blackledge a/k/a Mary Ann Schwegmann from the contract would be approximately \$120,000, the value of the two houses, \$40,000 received from the transfer of the 6.6 acreage. All monthly monies she received average \$4,000 per year (see exhibit H) for 13 years totaling approximately \$50,000, which plaintiff put back into the household which

benefited the joint venture (Plaintiff's deposition Vol. III pp. 439). Defendant John G. Schwegmann, Jr. had assets in excess of 60 million dollars in 1979. During the time period the parties lived together he accumulated at least 40 million dollars. This accounts for his wealth before 1966 and accumulation of assets after 1966.

Plaintiff complied with the contract and was in compliance with the contract and seeks payment.

John G. Schwegmann, Jr. has breached the contract.

Margie Schwegmann has breached the contract.

John F. Schwegmann has breached the contract.

The defendant corporations/companies have breached the contract.

## ISSUES

This matter came into the Fifth Circuit Court of Appeals on a motion of appellant. Appellant's causes of action have been dismissed as a matter of law, of the facts as they appear in the plaintiff's pleadings, depositions and ancillary exhibits are true.

In order to dismiss claims on a Motion for Summary Judgment, there can be no issues of fact, and as a matter of law, there are no causes of action. In this case Judge Zaccaria classified the oral contract as a universal partnership, and that since the partnership was not in writing, it would be invalid; and even if the contract were valid, it could not be upheld because it was derived from a meritorious relationship.

The order dismissed plaintiff's claim

or recovery based on an implied contract because the Court did not recognize any property rights between a concubine and paramour and the unmarried cohabitation would not give rise to property rights of the individuals.

The Judge further refused to allow Plaintiff's claim for recovery under the theory of quantum merit for domestic services because the underlying agreement was illegal because it derived from the illicit sex.

The Court rules this was no constructive trust because there was no fiduciary relationship between the plaintiff and any defendant.

The ancillary causes of action of declaratory relief and simulation are corollary to the oral and implied contracts and were dismissed because the

Court did not find that there was any form of contract.

Plaintiff uses the term common-law marriage which corresponds to the terminology used by the Louisiana Supreme Court in Henderson v. Travelers Insurance Co., 354 So. 2d 1031 (S. Ct. 1978) and Jackson v. Continental Gas Co., 412 So. 2d 1364 (S. Ct. 1982) when framing the issues before the Court. Writer acknowledges the repugnant nature of common-law terminology to the civil law.

ISSUE I. Should the oral contract be classified solely as a partnership?

ISSUE II. Should the plaintiff's common-law marriage defeat the oral contract?

ISSUE III. If a partnership is a correct classification of the parties' agreement, doesn't the partnership law



passed in 1980 apply, thereby eliminating the application of past partnership law to the present case making a universal partnership null and void?

ISSUE IV. If the present partnership law applied, would the parties have a valid partnership?

ISSUE V. Could the oral contract encompass more than one partnership agreement?

ISSUE VI. Can the partnership or partnerships be valid if the partners are also in a common-law marriage?

ISSUE VII. Does Louisiana law recognize a constructive trust when there exists a fiduciary relationship? Is there a fiduciary responsibility between all defendants and plaintiff?

ISSUE VIII. Is the Court incorrect in stating as a matter of law that a common

law marriage does not give rise to property rights and that concubines and paramours have no rights to each other's property?

ISSUE IX. Can an individual who is impoverished and who by her actions has enriched other persons or entities be denied recovery from the enriched persons or entities because she lived in a common-law marriage?

ISSUE X. Can an individual who is impoverished and who by her actions has enriched the party she lived with be denied recovery from the enriched party because they lived in a common-law marriage?

ISSUE XI. Does Louisiana Civil Code Article 1481 violate the United States Constitution and the Louisiana State Constitution?

ISSUE XIII. Can individual be denied recovery after entering in a contract because they are in a common-law marriage as between themselves and third parties who benefited from the contract?

ISSUE XIV. Didn't all other defendants acknowledge the oral and implied contract and aren't they indebted to plaintiff based on the contract?

ISSUE XV. What monetary amount is plaintiff entitled to as a result of her oral contract and implied contract?

ISSUE XVI. What monetary amount is plaintiff entitled to as a result of her impoverishment and the enrichment of defendants?

ISSUE XVII. The Court should have considered the recusal of all of defendants' attorneys despite the absence of one attorney of record for defendant

and considered the tainting issue at the time of the hearing.

ISSUE XVIII. Should the settlement have been inforced?

ISSUE XIX. All of the above issues involve issues of fact demanding that of the all matters be remanded to trial court for adjudication.

ISSUE XX. In considering the Court's Judgment, the Court has burdened the plaintiff with proving in any future hearing that any recovery in quantum meruit would have to be independent from the relationship of concubinage, and plaintiff seeks that the Court of Appeals overturn this protion of the Judgment as being judicially too narrow.

ASSIGNMENT OF ERROR ON  
ISSUE II, ISSUE III, ISSUE VI,  
ISSUE VIII, ISSUE IX AND ISSUE XII

ARGUMENT ON ASSIGNMENT OF ERROR ON  
ISSUE II, ISSUE III, ISSUE VI,  
ISSUE VIII, ISSUE IX AND ISSUE XII

Marriage is the legal union of a man and woman. Historically, marriage was a moral issue which was incorporated in many religions. After the development of sophisticated governments, religion became a civil matter.

Although the Roman citizenry encompassed many religions which required marriage, a marriage was viewed as a civil matter which allowed the Roman governments to define the rights and status of citizens of the Roman Empire and their property. The Romans permitted a civil ceremony, and they allowed marriage by mere consenting words conducted in the present tense and marriage by agreement which was an agreement to

marry in the future following [sic] by carnal knowledge. Their form of marriage, derived from the Latins, existed until the 16th Century in both French and English law.<sup>2</sup> With the advent of Christianity, the Church's position on marriage, which at first was only a moral reformation on an individual's private life, became a true power with rights of legislation and of jurisdiction. The Church gained power within European governments which dictated the conditions and rules under which church members would marry without any concern for any necessity of civil formalities.

Marriage was more than a romantic notion to satisfy the parties' emotional needs and development. It was a legal structure endorsed by the Church and State to preserve order and stability according to religious tenets.

In the 15th and 16th Centuries, there existed in Europe a great struggle between the Roman Catholic Church and the royalty. Royalty slowly recovered its jurisdiction over the prerequisites of marriage and there became an absolute division between the law of the State and Canon law. French and English law regarding marriage was a fusion of religious requirements and civil requirements. Marriage was also used to enforce the social structure and maintain order of each government. The legal order defined the roles of individual members and the property of those individuals in relationship to the government.

English and French law in the 1600's and 1700's still reflected the impact of the feudal system which had dominated European society for hundreds of years and which forfeited and protected the



inheritance rights of individuals.

Although fealty to a king or state was recognized, individual wealth and power was a measure of one's land ownership and control thereof and laws were implemented and preserved in order to allow an orderly transition of land and estates from father to son. At a man's death, property was inherited by his legitimate heirs. A legitimate heir included a wife and children or any collateral legitimate relative within the family.

Frenchman and Englishmen of the 1600's and 1700's, notwithstanding the preservation of society as men before them and after them, did not always limit their sexual curiosity and encounters to their wives. From time to time, despite their religious beliefs and their commitments to civil order,

they did not always continue to live with their wives or would not marry and would live with women who were not their wives, this resulted in the free union of two people and the ensuing birth of children. This is not to suggest that only Frenchmen and Englishmen participated in this type of lusty behavior. These unions resulted in the birth of children out of wedlock or illegitimate children. The status of the parties who lived together out of wedlock was derived from Roman Law. Concubinage is a term that is derived from the Latin word concubinatus, meaning an informal, unsanctioned or natural marriage as distinguished from a civil marriage.<sup>3</sup> A concubine is one who cohabits with a man to whom she is not married or a sort of inferior wife [among Romans] upon whom the husband did not confer his rank or

quality and a concubine is a term which refers only to a women [sic].<sup>4</sup> Concubinage was recognized and practiced by both married and single Roman men.<sup>6</sup> This institution was condemned as immoral by the Christian Church and in 1563 any individual who continued to live together without marriage was excommunicated.<sup>7</sup> However, concubinage as a legally sanctioned institution continued to exist.

As the Europeans began to explore the new world. [sic] They brought their legal traditions regarding property. Marriage was encouraged. Marriage was many times physically impossible to consummate and did not always meet the needs of the new society. To accommodate both tradition and need both the French and Spanish allowed, a marriage by agreement, derived from Roman law, allowing the

parties to sign a document before a notary agreeing to take each other as husband and wife. The parties later solemnized the marriage as promised.

Marriage by agreement persisted for a long time in the territory of Louisiana out of necessity and allowed some descretion [sic] as among parties who have lived together for long periods without formalizing their marriage. Sometimes the distinction between concubinage and marriage was merely timing.

When Louisiana was a territory, there was only the will of the individuals to implement any rule regarding marriage. As the territory succumbed to civilization, individuals loosely abided by the laws of the French or Spanish. There was both religious law and civil law. Religious laws affected one's morality and future consequences; other laws

affected one's status within the government. Just as the settlers brought their religion, wives and children, they also brought or created their own concubines and illegitimate children.

Concubinage was accepted in the territory of Louisiana and was less defined in practice than later when the territory became a state. The State of Louisiana, as an entity, enacted specific civil requirements to define marriage in order to assert the State's control over marriage, creating uniformity and eliminating confusion which had arisen in the State due to tradition.

In Johnson v. Johnson, 117 La. 967, the State of Louisiana eliminated all marriage by agreement. The Court ruled that the only legal marriages in the State of Louisiana were ones which complied with state law. All marriages

not complying with the law were null and void. Johnson, supra, has not been changed and no marriage by agreement, procuration or representation is presently allowed under Louisiana law.

The exception to the general rule is a putative marriage as outlined in Louisiana Civil Code Articles 117 and 118 which states that parties must act in good faith, both believe that they are married and have participated in a ceremony. Succession of Marionni, 164 So. 797 (S. Ct. 1935) expanded the interpretation of the law to define good faith to exclude an actual ceremony if one or both parties have a reasonable belief that they were honestly married. They will be allowed to receive the benefits extended to individuals in a putative marriage. Good faith is always presumed.



The distinctions that the Court made in deciding which case would fall under the umbrella of a putative marriage and those which would be classified as common-law marriage are slim, thereby denying recovery to the woman and her heirs. Early cases bear distinct racial and cultural overtones. Succession of Dotson, 11 So.2d 448 (S.Ct. 1941); Sesostrius Youchican v. Texas & Pacific Railroad, 86 So. 551.

The Court should take judicial notice of the status of women and other minority groups<sup>5</sup> in the State of Louisiana in the early 1800's when the body of family law was enacted. The law discriminated against all women, both married and single, and against blacks and Indians. The Court cannot consider the issues in this case without acknowledging the historical perspective found



within family law and the development of that law to reflect the changes in society from 1800 to 1983.

In the 1800's blacks were still slaves. Slaves could marry only with the consent of their owners. According to the Black Code in the State of Louisiana enacted by the territorial legislature, "Louisiana Code Noir" provided rules for owners and slaves. After the Civil War in 1865, slaves who were at that time cohabitating could execute an authentic act declaring that they were married and indicating when they married, and how many children were born of the marriage, with the names and dates of births of their children.<sup>5</sup>

One wonders how prior slaves who could not read would find out about the law, assuming that they could afford to pay the notarial fee associated with such

a declaration. It is easy to speculate that very few slaves were able to avail themselves of this means to ratify their "common-law marriage" and remained in a status of concubinage. Common-law marriage is a popular term used to refer to a man and woman who live together without the benefit of marriage and who hold themselves out to be man and wife.<sup>6</sup>

This attempt to solve the problem of marriage among blacks was totally inappropriate considering the problem of literacy and the level of legal sophistication of former slaves.

Louisiana family law throughout the 1800's and 1900's has plagued this culture. The common-law marriage was not recognized in this state and all such unions were classified as concubinage.

Common-law marriage has not been accepted in Louisiana. Blasine v. Succession of Blasine, 30 La. Ann. 1388; Succession of Saines, 145 So. 270.

No legal benefits flowed to the children of these unions and to the individual concubines and paramours. No alimony or child support could be awarded and illegitimate children acquired none or less property rights than their legitimate counterparts. Concubines received no benefits of their unions. This, of course, brings us to another form of discrimination. Legally married women were treated unequally in the law and the community property laws of the State a tremendous disability on them.<sup>7</sup> The new community property laws did not go into effect until 1980. Concubines were given no rights under the law, although their

counterpart did not suffer in the same fashion.

The laws of the State continued to reflect up into the 1970's unequal treatment of women, blacks and Indians as indicated by the following laws:

The marriage of white persons with persons of color was forbidden (Louisiana Civil Code Article 94), and the marriage of Indians and persons of color was forbidden (La. R.S. 9:201); both laws were repealed in 1971. A divorced party could not marry the adulterer of his or her accomplice (Louisiana Civil Code Article 161, repealed in 1971). A widow could not marry for ten months after the dissolution of her marriage (Louisiana Civil Code Article 137, repealed 1970). The head and master law dictating that the man controlled the community and the woman's separate property and all other

ancillary matters (Louisiana Civil Code Articles 2325 - 2437 repealed 1980 ).

One of the most subtle types of discrimination exists in the guise of concubinage. It discriminates against black heritage, culture and, more particularly, against women. A woman is always a concubine and a male is a paramour. A concubine lives with a paramour and they are not married. The only references in Louisiana law to a concubine is the succession section of the Louisiana Civil Code in Article 1481. This article prohibits concubines from inheriting more than 1/10th of her paramour's (the male counterpart to a concubine) estate. There is a prohibition of a donation of immovables either inter vivos or mortis causa.

Ancillary articles to Louisiana Civil Code Article 1481 are Louisiana Civil Code

Articles 1483, 1484, 1485, 1486, 1487, 1488, 1491, 1496, and 1502. The codial articles on illegitimates go hand and hand with the state of concubinage. It's interesting that Louisiana Civil Code Article 1481 comes directly below a code article that defines the ability of a married woman to make donations.

Louisiana Civil Code Article 1481 is a gender based article as there is no counterpart to it prohibiting the inheritance of an immovable by a paramour or a prohibition as to his inheritance of more tha 1/10th of the concubine's estate and is violative of both the United States Constitution and the Louisiana Constitution.

The Court did not make any rulings on any constitutional issues raised in the original pleading and therefore plaintiff's argument may be premature.



Louisiana Civil Code Article 1481 is unconstitutional as it does not treat males and females equally. In addition to violating Article I, Section 3, it also violates the following parts of the Louisiana Constitution, Article 1, Sections 2, 3, and 4, and Louisiana Civil Code Article 1481, as well as the United States Constitution Article 14, Section 1.

Other than C.C. Art. 1481, there were two laws enacted in 1960 and 1975, repealed stating that common-law marriage was illegal. In fact, there were two laws which were passed reflecting society's state of mind, which stated that common-law marriage either written or oral, entered into between a man and woman together to become husband and wife without a ceremonial marriage, was a criminal offense. Its co-respondent law



was that it was illegal for a woman to have more than one illegitimate child (La.R.S. 14:79.2). Both laws were criminal offenses requiring a fine and imprisonment for at least one year. Robert Pascal, in an effort to recoup some measure of dignity for Rep. Tiche, Fields and Lehman, the authors of these bills interpreted La.R.S. 14:79.1 to mean that couples who are living in concubinage were excluded from the law and only those people who agree to cohabit and to be husband and wife without marriage could be prosecuted, obviously a "very fine" distinction. La.R.S. 14:79.2 was interpreted to mean that a woman could not be prosecuted unless she had more than one illegitimate child at one time. Both laws appear to be laws which created part of a series of Jim Crow laws. There is no evidence that anyone

was ever prosecuted or convicted under either statute.

The only other statue [sic] defining concubinage was passed in 1982 and states that a woman cannot receive alimony if she's living in "open concubinage."

The public policy arguments in the concubinage cases also violate the above articles of the Louisiana and United States Constitutions. The lower courts did not make a ruling on the constitutional issues and plaintiff may be premature in making this argument in this brief, but intends to preserve her constitutional argument in connection with the law of concubinage which developed via case law over the past 180 years.

Concubinage was widely accepted in the State of Louisiana and was sometimes

barely distinguishable from a marriage by agreement and a putative marriage. As society changed, the public policy arguments and disabilities against concubines became more distinguished. The only difference between a putative spouse and a concubine is good faith. Purvis v. Purvis, 162 So.2d 239 (2nd Cir. 1935).

Concubinage does not fall into the same category as prostitution as it has never been defined as indiscriminate sexual intercourse with males for compensation (La.R.S. 14:82). A mistress or courtesan is one whom a man sees primarily for sexual pleasure (Purvis v. Purvis, supra. "A mistress or courtesan is distinguished from a concubine. A concubine is one who performs the duties and assumes the responsibilities of a wife without the title and from a legal marriage." Purvis

v. Purvis, supra. A concubine is distinguished from a putative wife in that the concubine knows she is not legally married nor does she believe that she is legally married. Gauff, et al. v. Johnson, et al, 109 So. 782; Succession of Johraus, 38 So. 417 (1905).

Since Louisiana Civil Code Article 1481 is the only article dealing specifically with concubines, the law developed from case law and from the application of public policy arguments and equity arguments (Louisiana Civil Code Article 21).

In the case law, public policy arguments state that concubinage is illegal and illicit. This put into motion public policy arguments that have never been challenged or examined in later cases.

It is important to track down the

Courts origin of the words such as illegal and illicit as used in case law. Before 1975 there was only one statutory reference to a concubine, Louisiana Civil Code Article 1481. There is no statute classifying concubinage or a concubine as being illicit or immoral. Although Louisiana Civil Code Article 27 does refer to illegitimate children who were born of an "illicit union".

Illegal implies that there is a violation of enacted law. For the court to use the word illegal, it implies that there is a Louisiana law which says that concubinage is illegal. There are no statutes that define concubinage as illegal and illicit. The terms are derived solely from the public policy arguments used consistently over a 180 year period and in the case law until Henderson v. Travelers Insurance Company.

354 So.2d 1031 (S.Ct. 1978).

Inherent in the concept of concubinage is that the concubine and her paramour have "illicit sex". One has to assume from case law that does not encompass any kinky sexual trends, but merely refers to any sex outside of marriage. Other terms used in cases are illicit connection (Lagarde v. Duhon, 98 So. 744 (S.Ct. 1924)); illegal cohabitation (Guerin v. Bonaventure, 212 So.2d 459 (1st Cir. 1968)); illicit relationship (Foshee v. Simkin, 174 So.2d 915 (1st Cir. 1965)).

Because individuals have "illicit, illegal sex", they are treated differently than two other individuals similarly situated. The case never refers to any specific statute or Louisiana Code Article in defining why sex in this situation is illicit or

illegal. In the early 1800's legal disabilities are justified in concubinage because "their condition" did not maintain good morals, or preserve the structure of society (Cole v. Lucas, 2 La. Ann. 946). The same rationale can be seen when examining the law regarding illegitimates. Disabilities are based on the unequal treatment of the concubine based on the above rationale has persisted from 1800 for a period of 183 years. Since that time there has been a phenomenal change in society's attitude toward sex, marriage, illegitimates, birth control, religion, status of minority groups, women's rights, and the economy as regards women. Can the State of Louisiana continue to maintain that individuals and, more particularly, a woman who lives in a status of concubinage or common-law be punished in



order to maintain good morals and do the disabilities actually "preserve" the best interest of society? Do the putative laws of the state which have been in effect since the early 1800's actually discourage the birth of illegitimate children and have they discouraged illicit unions?

Does the case law discriminate against individuals because of race? Cases before the turn of the century and especially between 1800 and 1865, displayed a very protective attitude toward concubines which reflected the acceptance of concubinage.

The cases before the 1900's carved out the following tests in deciding whether the concubines could recovery [sic] any property:

(1) Was the relationship one of concubinage?

(2) What was the motive and extent of the relationship?

(3) Can the two be separated?

(4) Consideration of the contributions of each individual of capital, labor, industry, economy vis-a-vis the cohabitation.

(5) Does the illicit, illegal union taint all parts of the endeavors of the parties?

(6) Equity?

Concubines in the 1800's actually won. Applying the above test one of the early cases ruled for the concubine. A couple had a business relationship and ran a boarding house. She did the work, using her furniture. He managed their business and took the profits allowing her usage of some of the money. There was no mention of a universal partnership. The Court ruled in her favor on (1)

equitable principles; (2) her contribution of labor, industry and capital; (3) and the purpose of their coming together. The Court ruled that the motive was not for the purpose of concubinage. Contributions of labor, industry and capital were the important considerations. Viens v. Breckle, 8 Mart. (O.S. 11) (1820). The Court blamed the paramour for his contribution to the concubine's situation.

The relationship was characterized as concubinage, but the consideration of capital, labor, industry, economy and equity was more important than any of the other tests. The illicit sex did not taint the recovery and was considered to be separable from other issues before the Court.

Elise Delamour met Augusti V. Roger in Paris where they lived together.

Additionally, Elise gave money to Augusti and they established a business. That business continued for a long time period. All property accumulated in New Orleans was from profits of their joint business, a business of hairdressing and keepers of a perfume store. This case involved the division of all property acquired by the parties during their business and personal relationship and the Court granted Elise Delamour one-half of all property acquired during their relationship including the immovable property.

The Court reaffirmed the lower Court's award to the concubine, reasoning that Elise Delamour was entitled to one-half of the property under the legal theory of equitable ownership and stated that no principle of law or morality requires us to reverse the judgment of the district

court. The Court refused to recognize defendant's arguments that there was a universal partnership and stated that "no principle of law or morality requires us to reverse the judgment of the district court". Delamour v. Roger, 7 La. Ann. 152 (NO 1852). The Court, although acknowledging that there was a [sic] "immoral connection", considered the equities in an objective evaluation, isolating the public policy argument.

In Delamour, supra, the Court created what we now call a constructive trust and recognized the fiduciary relationship of Mr. Roger. Mr. Roger had title and control of their joint property for some time and the property was in his name. The decision had all of the elements of a constructive trust. It also recognized a defacto community between the parties, quantum meruit quasi-

contract and and [sic] implied agreement. The Court relied very heavily on equitable principles.

The Court rejected the classification of the relationship as one of a universal partnership. The "equitable ownership" theory is a viable legal theory applied to the division of property between the concubine and the paramour.

In Malady v. Caldwell, 25 La. Ann. 448 (1873), the Courts applied the same equitable ownership theory which encompassed a fiduciary responsibility between the parties and created a defacto community also recognizing an implied contract and quantum meruit principles. This case involved an unusual set of circumstances. Mr. Malady abandoned his wife, and decided to broaden his horizons by moving to New Orleans. He apparently charmed a young

woman, Miss Caldwell, who began living with him. He was, of course, much older and may have been enamoured with her estate. Although not large, it was at least an estate. They ran a rooming house and Miss Caldwell took care of that endeavor; Mr. Malady, of course, managed the money. Property was acquired in the name of Miss Caldwell. However, the abandoned wife who was destitute found her way to New Orleans only to find her husband living in a common-law marriage. She sued Mr. Malady who had nothing, so her ingenious lawyer sued Miss Caldwell. The Court interceded to resolve the issue between the menage. The Court gave one-half of all of the property in Miss Caldwell's name to Mrs. Malady. The Court looked behind the title to examine the source of the funds which were used to purchase the property as in Viens



v. Breckle, 8 Mart. (O.S. 11) (1820).

The Court gave Mr. Malady a windfall since, using the same equitable principles, he could obtain one-half of his wife's property and one-half of his concubine's property.

Other cases before the 1900's were:  
Ditch v. Wilkinson, 10 La. 201 (1836);  
Succession of Pereiulhet, 26 La. ANn.  
[sic] 87 (1889). [sic] All these cases the concubine or her heirs sought recovery for work provided as per the parties' express and implied agreements. In Ditch, supra, the concubine was barred from recovering any money based on their agreement as it was classified as a suit for wages and barred by a one-year prescriptive period. In Succession of Pereiulhet, supra, a woman received recovery for the fulfillment of her to take care of the man she lived with and the

Court indicated there was no proof of concubinage. Succession of Morvant, supra, the concubine had procedural problems and her recovery was limited to Louisiana Civil Code Article 1481. In Llula, supra, the heirs were also barred from recovery and the Court stated public policy arguments to bar recovery because concubinage is a source of dissolutiveness and evil and of course that applied to the offspring of concubines. The disabilities on both the concubine and the illegitimate is a direct attempt by the legislature to discourage concubinage (Succession of Llula, supra; Dupre v. Caruthers, 6 Ann. 156 (1851)).

Various cases before 1900 refused any recovery to the concubine due to Louisiana Civil Code Article 1481 (Simpson [sic] v. Norman, 51 La. Ann.

[sic] 1355 (1899); Succession of Pereiul-  
het, supra; Succession of Beard, 14 La.  
Ann. 121; Lazanne v. Jacques, 15 La. 559  
(1860)).

By the turn of the century there were two lines of cases - those recognizing elements of constructive trust, equitable ownership, quasi-contract/quantum meruit, de facto community and a great emphasis on equity and those cases barring recovery based on Louisiana Civil Code Article 1481 and public policy arguments.

The Victorian Age is upon society and ladies are covering piano legs for fear that their appearance is obscene. Sex is rigid and not even an object for discussion. Public policy arguments after 1900 and in future cases become more moralistic and more punitive. The Courts are still referring to concubinage as a common-law marriage.

In Simpson v. Norman, supra, the Supreme Court overturned the lower Court's decision. The lower Court held for the concubine and stated that concubinage was incidental to the contract; therefore, a concubine was not barred from recovery. The lower Court stated that if the contract is agreed upon before the concubinage, then the illicit connection would not bar recovery. The Supreme Court cited Louisiana Civil Article 1481 (1468) and reversed the lower Court barring recovery and limited any donation to 1/10th of a paramour's estate and a prohibition of the donation of an immovable. In addressing the contract issue, the Supreme Court stated that a contract between a concubine and paramour cannot be recognized if it derived from an "illicit relationship". The "illegal

union" requires punitive treatment. The Court in citing Louisiana Civil Code Article 1892 which states that a contract must have a lawful purpose and if it is contrary to good morals or public order, it can have no effect and it is void.

In Simpson, supra, the Court cites cases that are considered contrary to good morals or public order. Fox v. City of New Orleans, 12 La. Ann. 154 (1857), which violated a specific city ordinance regarding bids of work. In Fireman's Charitable Assoc. v. George H. Berghaus, George had a fire in his building but before the firemen could come and put the fire out, they made him sign a contract agreement to pay more money, although they were paid by the municipality to protect the citizens. Stupidly, the firemen proceeded to sue George to enforce the contract. George won and the contract

was void. The Court stated that their behavior was improper and no citizen should have to pay twice to receive fire services.

Mr. Glover and Mr. Taylor were running for public office and they contracted whereby each candidate would receive one-half of the net profits of the office for the term. The contract was found void and Mr. Glover, the loser, was unable to collect on the contract as it was against public policy (Glover v. J. H. M. Taylor, 38 La. Ann. 634 (1886)).

Mr. Davis was a "gambling man" who made a bet on the Clay/Polk presidential race and placed the bet with Mr. Holbrook as a third party. A controversy arose over the validity of the returns in Plaquemines Parish. The Court would not enforce the contract as it was

against public policy (Davis v. Holbrook,  
1 La. Ann. 174 (1846)).

In comparing concubinage with the four cited cases, the Court again refers to the illegal, illicit nature of the relationship, and in dicta continues the public policy prohibition against common-law marriage. Three of the cited cases involved government officials and their conduct toward the public. Only the case on gambling involved a personal moral issue. The legislature later enacted legislation making gambling illegal (La.R.S. 1450). The legislature never enacted a comparative article on concubinage.

The Courts went to great lengths to maintain the disabilities against concubines but, as always, the Court continued to be swayed by equity. One of the most remarkable cases, as far as



contrary legal argument is LaGarde v. Duhon, 98 So. 744 (1923). Mrs. LaGarde asked for a recognition of one-half of the property of Mr. Dabon [sic]. They lived together from 1893 to 1919. Mrs. LaGarde rendered domestic services and stated that the contract was made before the cohabitation. Afterwards she put \$100 of her own money toward the purchase of his house and all her wages had gone back into the joint effort. The Court reasoned that if there was a univeral partnership, it should be in writing, and therefore there was no valid partnership. All claims for services were dismissed because the concubinage was interwoven with the claim for wages. The Court then stated she can recover for monies advanced [sic] the deceased to discharge the mortgage on his home and the wages

which she turned over to him for partnership purposes which allowed recovery on an [sic] quantum meruit theory.

Like the early cases, later cases looked behind the title to examine the source of funds.

A new group of cases restricted recovery to concubines by narrowing the test so that if the parties reside in a state of concubinage or it is a common-law marriage, an illicit, illegal relationship taints financial dealings either personal or business. The prior tests of industry, economy, capital, and labor as between the parties, the intent and motive; or the equities, are overshadowed by the illicit relationship. The illicit sex in a common-law marriage taints and affects the body of the claims so fatally as to make remedy impossible. Sparrow v. Sparrow, 93 So.

2d 232 (S. Ct. 1951); Chambers v. Crawford, 150 So.2d 61 (2nd App. 1963); Guerin v. Bonaventure, 212 So.2d 459, 463 (1st Cir. 1960); Foshee v. Simkin, 174 So.2d 915 (1st Cir. 1965). The endeavors of the parties continued to be classified as a universal partnership (Godlin v. Deggs, 23 So.2d 704 (4th Cir. 1945); Chambers, supra; Foshee, supra; and Guerin, supra; Keller, supra).

No matter whether recovery was sought because of a commercial venture or for domestic services rendered over a long period of time, recovery was denied to the concubine or her heirs if the source of funds which were applied to the joint effort was obtained during the concubinage. Godlin v. Deggs, 23 So.2d 704 (4th Cir. 1945); Chambers, supra; Foshee, supra; and Guerin, supra; Keller, supra.

The State in providing for workmen's

compensation did not mention illegitimate children or concubines. The Louisiana Courts extended the State's workmen's compensation statute to include illegitimate children, but did not include coverage to concubines. Moore v. Capital Glass & Supply Co., et al, [sic] 25 So.2d 249 (1st Cir. 1946); Patin v. T. L. James & Co., Inc. 39 So.2d 177 (1st Cir. 1949), 42 So. 2d 304 (1st Cir. 1949); Jenkins v. Pemberton, 87 So.2d 775 (2nd Cir. 1956); Humphreys, et al. v. Marquette Casualty Co., et al, 103 So.2d 895 (S.Ct. 1958).

The Court in dicta stated that La.R.S. 23:1232 is social legislation and its extension to include illegitimate children, for coverage is sound as children are innocent victims, although no workmen's compensation should extend to concubines as they voluntarily entered

into a relationship not countered by the law of the State. Moore v. Capital Glass & Supply Co., et al, supra; Patin v. T. L. James & Co., Inc., supra; Jenkins v. Pemberton, supra; Humphreys, et al. v. Marquette Casualty Co., et al, supra.

The Workmen's Compensation Law does [sic] was extended to include coverage of a concubine or common-law wife. In a landmark decision, the Supreme Court ruled that a dependent concubine can recover workmen's compensation benefits (Henderson v. Travelers Insurance Co., 354 So.2d 1031 (S.Ct. 1978)).

The Supreme Court in its decision traces the history of workmen's compensation law in relationship to a concubine. Henderson involves a couple who lived together for eleven years.

The Court refers to her as a dependent concubine and uses the term "common-law wife". There were no other members of decedent's legitimate family. The Court described the relationship as a loving stable relationship, and the law is settled that dependent members of a decedent's family household are entitled to recovery under La.R.S. 23:1231, 1232(8), 1253. A broad interpretation of the statutes have been adopted to effectuate the social economic purpose of the statute which is "to provide compensation for dependents deprived of support through work-caused death of the decedent". (Caddo Contracting Co. v. Johnson, 64 So.2d 177 (1953); Patin v. T. L. James & Co., supra; Thompson v. Vestal Lumber & Mfg. Co., 22 So.2d 842; Archibald v. Employers Liability Assur. Corp., 11 So.2d 492; McDermott v. Funel,

247 So.2d 567 (1971).

The Supreme Court recognized the concubines, common-law wife as a dependent, and the couples' relationship as a permanent relationship like a husband and wife, and cites the following cases as defining concubinage:

Succession of Franz, 94 So.2d 270 (1957);

Succession of Johraus, 38 So.2d 417

(1905); Succession of Keuhlig, 187 So.2d

520 (La. App. 3rd Cir. 1966). The con-

cubine is a wife without title and a man

and woman living together in a relation-

ship for the purpose of "family" and

the children of that relationship are

entitled to compensation benefits. In

interpreting the statute, the Court

found that the intent of the statute was

to protect all dependent members of a

household from the loss of support.

The Supreme Court cited Professor



Malone who in his commentary states that denial of compensation to the concubine is more moralistic than it is sound. No other claimant need prove his moral worthiness so long as he or she is dependent. Malone, Louisiana Workmen's Compensation Law, §304, p.399 (1957).

The Supreme Court recognized the right of a concubine to collect workmen's compensation and characterizes the relationship as a stable relationship. They did not use the sam [sic] old public policy arguments.

Following this case is another landmark case which is also out of the Supreme Court of Louisiana, Jackson v. Continenta [sic] Casualty Co., 412 So. 2d 1364 (S.Ct. 1982). Phillip Jackson, an illiterate Louisiana State University employee, paid for a life insurance

coverage for Beulah Jackson, his concubine. La.R.S. 22:176(2). They lived together for some seven years. The Supreme Court found for Phillip Jackson, ruling that he should be allowed to recover insurance benefits. The Court characterized their unmarried state as a very "technical point". The insurance policy is a contract and Mr. Jackson entered into that contract with the insurance company and should be allowed recovery. The contract was valid and was enforced by the Supreme Court of Louisiana.

In summary, the Supreme Court of Louisiana enforced a contract between a paramour and a third party and in dicta in both Henderson, supra and Jackson, supra, reflected a significant change in the public policy arguments. The Court recognized the right of concubines

and paramnours [sic] to be treated equitably. In Johnson supra, the term common-law union is used instead of concubinage. This relationship is characterized as a stable, warm, loving relationship between two parties. These cases have expanded the law to include rights and a legal status for a common-law wife and an extension of the logic would dictate that the parties have a right to litigate their rights in Court.

In the 20th Century the criteria that the Courts must frequently used [sic] to decide issues between the common-law spouses has been Louisiana Civil Code Article 1481 and public policy arguments. The public policy argument assumes that marriage preserves and strenthens [sic] society with responsibilities and obligations providing order to society. Marriage is an important element of

society and, as such, any erosion of marriage is an erosion of the stability of society.<sup>5</sup>

A traditional marriage lasted for a lifetime of one of the spouses or both. It emphasized the husband's authority and the submissive wife's role as a mother and housewife (caring for children, husband and house along with other matters)<sup>9</sup>, although women who lived in the 1800's would disagree. The community aspect was emphasized over either individual personalities of the spouse.<sup>10</sup> The new marriages have changed the roles of the parties and the economic structures of the community. Stability of the marriage is not sustained by the statutes. The divorce rate reflects that 30% to 40% of marriages now formed are predicted to terminate in divorce and three out of four divorced persons will

remarry.<sup>11</sup> At present the typical traditional family of the breakwinner [sic]/homemaker with at least two children comprise a statistical minority of the population. The one-parent family is growing at ten times the rate of other families.<sup>12</sup>

Illegitimate births accounts [sic] for 14.2% of all live births in 1975 and in 1976 and illegitimate births in the black population accounted for more than one-half of all live births. Characteristics of the new marriage is that while it lasts, it is more compassionate, close and intense, but it is more perishable and unstable. There has been a substantial [sic] upheaval in the family law systems in Western industrial society beginning in the 1960's, and from 1960 to 1970, the number of unmarried cohabitants in the United States increased

by 800%, representing a trend that is likely to continue.<sup>14</sup> An estimate 2.7 million people cohabit.<sup>15</sup> The number of unmarried couple households doubled to 1.3 million.<sup>16</sup>

The Court can take public notice of the influence of the media regarding the sociological acceptance of "living togethe [sic] her [sic]" - pre-marital sex, adultery, single family households, divorce and illegitimate births. The acceptance of pre-marital sex and adultery is common place among all current soap operas on daytime television. Many present-day movies, both on cable television and in theaters, also depict society's modernized standards and attitudes regarding sex and common-law marriage (See Index).

The progression of society and the

law is to respect the individual. Individual members of society keep society stable. Respect for the individual's rights has been the cornerstone of the law. In the area of family law in this state, the legislature has shown a clear intent to remove all putative, moralistic attitudes toward divorce and separation by repealing much punitive legislation and enacting no fault divorce, no fault separation. These have been significant changes in the community property system, equalizing the roles of both husband and wife, and joint custody of children. Banking laws now treat women equally. Coupled with the Supreme Court decisions regarding concubinage, common-law marriage and their relationships to contract and workmen's compensation dictates the Court remand all causes of actions to the



lower Court for trial.

Other states have dealt with public policy discussion on common-law marriage. Some states have following the" [sic] severance doctrine", meaning that if sex was not part of the consideration, then the agreement can be enforced as per the contract law of the state.

Kozlowski v. Kozlowski, 403 A.2d 902 (1978); Dosek v. Dosek, 4 Flr. 2828; McCall v. Frampton, 81 A.D.2d 607; Marone v. Marone, 50 W.4 2d 481; Kinnison v. Kinnison, 627 P.2d 594 (198 ). [sic]

Living together has been found not to be in violation of public policy in the following cases: Kinnison, supra, Glasgow v. Glasgow, 410 N.E.2d 1325 (1980); Lathan v. Lathan, 547 P.2d 144 (1972); Tyranski v. Piggins, 205 N.W.2d 595 (1973); [sic] v. Somera, 41 N.Y.3d 858 (1977); Green v. Richmond, 337 N.E.2d 691

(1975); McHenry v. Smith, 609 P.2d  
855 (1980); Vine v. Vine, 7 F.L.R.  
2766 (Conn. S.Ct. 198 ) [sic].

Other states have upheld the right of  
parties to contract. Marvin v. Marvin,  
18 Cal.3d 660, 557 P.2d 106; Crowe v.  
Degioia, 179 N.J. Super (1981); McHenry  
v. Smith, 609 P.2d 853 (1980).

A constructive trust has been upheld  
in the following jurisdictions: Alboe v.  
Harvin, 30 So.2d 459 (1947); Walberg v.  
Mattson, 232 P.2d 827 (Wash. 1951);  
Padillo v. Padillo, 100 P.2d 1093 (Cal.  
1940).

The State of Washington has dealt with  
long-term family-type, non-marriage  
relationships in the most consistent  
manner using the following theories:

1) implied partnership or joint  
venture (In Re: Estate of Thornton, 81  
Wash.2d);

2) constructive trust (Humphries v. Reveland, 407 P2d 967 (1966));

3) resulting trust (Walberg v. Mattson, 232 P.2d 827);

4) Owners (Creassman v. Boyle, 196 P.2d 835; and

5) Tenancy in Common West v. Noels, 311 P.2d 389.

Issues II, VI, VIII, IX, X, XIII, and XX all deal with the issue of concubinage/ common-law marriage and its influence on the present decision. The major portion of this brief has been devoted to the law as it pertains to concubines. Louisiana Civil Code Article 1481 limits donations to concubines and violates the Louisiana and United States Constitutions. There are no other Louisiana laws which define the rights of a concubine. Common-law marriage is used interchangeably with the term concubinage.

Jackson, supra and Henderson, supra.

There are no statutes stating that concubinage is either illegal or illicit. The law has developed almost entirely from public policy arguments and the application of these dictate that the Court re-evaluate the public policy argument that resulted in the prior decisions.

The Supreme Court of the State of Louisiana has abandoned the prior illicit, illegal taint public policy argument and has gone back to an equitable approach to individual rights of each party in a common-law marriage (Henderson, supra and Jackson, supra).

In fact, the Court in both cases uses the term common-law marriage. Both cases emphasize that the common-law marriage is a relationship that benefits the parties

and in which the State accepts and provides protection for the parties (Henderson, supra). In extending the benefits to individuals of a statute in a common-law marriage, the past public policy arguments became obsolete. The Supreme Court reaffirmed and further extended protection to individuals in a common-law marriage under Jackson, supra. The Court enforced a contract with a third party insurance company. Again, the language of the Court was gentle and accepting of the parties. The Courts have gone back to an equitable approach to the individual rights of parties in a common-law marriage. The Court stated that a common-law spouse should not be barred from recovery by an "irrelevant legal status". The purposes of group insurance does not distinguish between a dependent concubine and a legal spouse.

In addition to the Supreme Court's rulings, the legislature has shown an intent to rectify past inequities in the law by repealing the community property law, and enacting legislation which takes the "fault" out of divorce and separation. The new joint custody law attempts to equalize the responsibility of parents. The new community property law provides that spouses can contract after marriage, removing a disability which had previously existed in the law. The community property law also changed the law regarding donations between the spouse and the spouse and third parties. The legislature changed the alimony laws of the State, and acknowledged in Loyacano v. Loyacano, 358 So.2d 304 (S.Ct. 1978), the changing role of women in society and within their marriage.

Even if the Court choose [sic] to distinguish this case from Henderson, supra, or Jackson, supra, the Court must recognize the urgent need for the Courts to enforce contractual agreements of individuals who cohabit. The Courts have to deal with the public policy issue and Louisiana Civil Code Article 1481 raises serious Constitutional issues. Because of the [sic] fact, unequal treatment in the law, the individuals who suffered the most as a result of the public policy arguments were women in general and black women more particularly. Society has changed dramatically and drastically requiring that the Court review the issues presented in this case. Is the Court going to contrive to deny our state population access to their day in Court and to given them redress of their grievances? The Court cannot be



confused about the issues. This case and no other case cited in the Syllabus of Concubinage involved casual sex. All of the relationships lasted over a five-year period with many of them lasting over 30 years. Each situation should be governed by equitable principles and established legal precedents in Louisiana law to remedy this situation.

Professor Fine in his law review articles points out the meaning, scope and function of the original texts of the Louisiana civil law. The French recognize L'Union Libre and property matters thereto. More serious is the public policy issues which are reflected in Louisiana law.

Professor Fine in his article outlines present French law. The French have defined an entire system of law dealing with the rights of common-law spouses,

including the division of property and the rights of children from that union. Louisiana law was derived directly from French law. The French law more directly corresponded to the early Louisiana cases following equity principles.<sup>17</sup>

ASSIGNMENT OF ERROR ON  
ISSUE I, ISSUE III, ISSUE IV,  
ISSUE V AND ISSUE VI

ARGUMENT OF LAW ON ASSIGNMENT OF  
ERROR OF ISSUE I, ISSUE III,  
ISSUE IV, ISSUE V AND ISSUE VI

The Court, when addressing the oral contract, ruled that it was a universal partnership. Historically concubinage cases have couched the agreement as a universal partnership. In Delamore supra and Malady, supra, a universal partnership was recited and the court applied equitable ownership, thereby dividing the property equally among the parties. Later cases, Forshee, supra; Chambers, supra; and Guerin, supra, also classify

the agreements between parties as universal partnerships either on the court's logic or due to the pleadings. None of the cases deal with the legal nexus from the oral contract to the old partnership law which was drafted to govern businesses.

There is no statutory reason why the courts began to apply partnership law to any oral contract. There is no explanation within the body of concubinage law except that the goals of the parties were joint and the state is a community property state.

Most of the cases are devoid of information regarding the pleadings and only refer to a request for equitable relief. In characterizing the implied or express agreement among the parties, the agreement was characterized by the Court as a universal partnership.

The intent of the redactors of the code was to treat a community of acquets and gains, a partnership, differently than partnerships defined in partnership law, Louisiana Civil Code Articles 2806 and 2807 (repealed 1980).

The community, created by marriage, is described as a partnership under the old community law, Louisiana Civil Code Articles 2221, 2393 and 2399. Individuals living in concubinage situations are similarly situated as married individuals. Clearly, the Guerin, supra case presented the issue of a commercial partnership. Before courts would not recognize the partnership venture raising a public policy argument that all monies used in the business were tainted by the concubinage. Whenever the concubine came close to recovery via partnership law; Guerin, supra; Gadler, supra; Foshee,

supra; Chambers, supra; Keller, supra, the Courts would reason that recovery was barred because of the "taint" to any investment the concubine made to the venture. Despite the industry of the concubine, she wss denied recovery. However, the paramour's industry and money was not tainted and the paramours were allowed to keep the profits oif [sic] the joint venture of the parties.

The partnership law was not drafted to encompass the relationship between plaintiff and defendant, John G. Schwegmann, Jr. The partnership is sui generis and the statutory formalities in the partnership law is not intended to apply to the relationship between the parties. Their relationship is not simply an arms length business arrangement, but an extremely personal one, subject to all the attendant

possibilities of undue influence and overreaching. It is impractical for the Court to expect the parties to conduct themselves in the formal manner of businessmen.

The Court has used the partnership law as a vehicle to throw a concubine out of Court by characterizing the relationship as a universal partnership and requiring that it be in writing, therefore, defeating any claim.

Even under the old law, it was possible for the parties to have been in a commercial partnership instead of a universal partnership or a combination of partnerships. A commercial partnership is defined in the old law in Louisiana Civil Code Articles 2324 and 2825.

A commercial partnership under prior Louisiana law allowed partners to engage

in commercial venture. In fact, engaging in any activity defined as being commercial could transform the the classification of the partnership (Southern Coal Co. v. Sundbery & Winkler, 104 So. 124,125 (1928)). The only limitatioins [sic] of a commercial partnership under prior partnership law was the inability of the parties to own immovable property (Hollier v. Fontenot, 216 So.2d 842 (La. App. 3rd Cir. 1968)).

Parties could have had several partnerships, some which engaged in commercial venture and a universal partnership. Applying old law, any commercial venture would change the nature of the partnership (Southern Coal, supra; Shalett v. Brownell Kide Co., 153 So.2d 425).

It is clear that all the parties who



contracted intended to have a valid contract/partnership. When the court classified the agreement as a universal partnership under the old law, it was found to be invalid due to the pre-requisites for a universal partnership, but that did not deal with the assets that had been acquired by the partnership. Just because a partnership is not legally valide does not mean it did not acquire assets nor does it change the intent of the parties.

The assets should be dispursed [sic] via partition under the old law. Plaintiff in this case is certainly entitled to have the court examine the assets and divide them accordingly. Gadlin, supra recognized the right of the partner to receive and have restoration of money advanced and contributed for

partnership purposes, despite the legal ineffectiveness of the verbal partnership agreement.

Under the old law, these are factual issues to be determined. The defendant was an astute businessman who invested in real estate and managed his grocery store business and another business. A grocery store business is a commercial partnership under the old law and so is the wholesale liquor business. The plaintiff testified that she gave advice about the stores and was promised money (See Facts). No major defendant was deposed and plaintiff does not have the necessary evidence to counter the major factual issues; i.e. the legal definition and clarification of their agreement. Could the agreement be a hybrid or solely a contract? Assuming there is a partnership under the old law, what assets, if

any, were accumulated?

The Court was incorrect in applying the old law as the relevant law, characterizing that the oral contract would be a universal partnership law. Enacted in 1980, Louisiana Civil Code Articles 2801 - 2893 encompass the new partnership law. As of January 1, 1980, the new partnership law went into effect.

The new law states that a partnership is an "entity". All classification of types of partnerships were eliminated. The only type of partnership now in existence is an ordinary partnership.

Under the new partnership law, the contract would not have to be in writing. Louisiana Civil Code Article 2801. Under both the old and new partnership laws, a partner had the right to bind other parties as to third parties and between

themselves (Krautkramer Ultraservice, Inc. v. Port Allen Marine Services, Inc. 248 So.2d 336).

Section 3 of the new law provides that the provisions of this act shall apply to all partnerships, including those existing on the effective dates of this act. At present, the proper partnership law to apply to this case is the present law. If the Court is to classify an oral contract as partnership, it would be under Louisiana Civil Code Article 2801 which states: "A partnership is a juridical [sic] person distinct from its partners, created by a contract between two or more persons to combine their efforts or resources in determined proportions and to collaborate at mutual risk for their common profit on commercial benefit."

The factual issues before the Court under the new partnership law is what are the assets of the partnership? When did it begin? Has it ended?

The Court should have enforced an oral contract. The contract is an oral contract and is governed by Louisiana Civil Code Articles 1761, 1764, 1765, 1779 and 2277. The conditions for a valid oral contract pertains to the ability of the parties to contract, the terms of the contract and a lawful purpose.

A contract need not be in writing to be valid so long as all requirements to its formation are fulfilled and the contract may be complete from action, inaction, and silence and the Court, when looking into the intent and consideration of the parties, looks at the entire contract and the intent of the

parties. Stupp v. Con-Plex, 344 So.2d 394 (1st Cir. 1977).

The Louisiana Code requires good faith performance of all obligations and will enforce these obligations (Louisiana Civil Code Article 1901); the obligation of the contract extends not only to law, but also equity and custom and whatever is necessary to carry it into effect. The Court can even, with no written contract, enforce obligations based on Louisiana Civil Code Articles 1865, 1964, 1903, and 1901. The Court states in National Safe Corp. v. Benedict & Myred, INC. [sic], 371 So.2d 792 (S.Ct. 1979) that the Court using these articles can enforce obligations not explicitly stated in a contract. Good faith performance is always implied. Everything incident to or necessary to carry it into effect is part of the

the agreement. In National Safe Corp., supra, the Court went beyond the written context of the contract enforcing obligations which were not in the written contract, expanding the scope of the interpretation of both written and oral contracts.

An oral contract is the issue before the Court. Louisiana Civil Code Article 2277 states that an oral contract for money must only be proven by one credible witness and other corroborating circumstances. The interpretive cases state that the plaintiff herself can serve as a credible witness (Miller v. Garvey, 408 So.2d 946 (1st Cir. 1981)). Great discretion is given to the trial judge's ability to determine the credibility of the witnesses and the corroborating evidence on the proof of an oral contract (Green v. Provencal Tie



Mill, 411 So.2d 1228 (3rd Cir. 1982).

The corroborating circumstances that would support an oral contract do not require independent proof of every detail of the witness's testimony (Samuels v. Firestone Tire & Rubber Co., 342 So.2d 66 (S.Ct. 1977) and corroboration testimony under Louisiana Civil Code Article 2277 need only be general (Ory v. Griffin, 162 So.2d 97 (1st Cir. 1964))).

Plaintiff and defendant also have entered in an innominate contract as provided by Louisiana Civil Code Article 1977 and recognized in the present partnership law. This classification of contract covers unclassified contracts or innominate contracts. This contract is subject to general obligation articles only and has been used in Louisiana law over a long time period. The Court, when faced with a contractual

situation which does not fit into any one category of contracts, have used the concept of the innominate contract (Nelson v. Texas P. Ry. Co., 92 So. 754; Thielman v. Guhlman, 44 So. 123 (1907); Phelan v. Wilkson, 38 So. 570; Hilliren v. Minoir, 12 La. Ann. 124 (1857)).

ASSIGNMENT OF ERROR ON  
ISSUE IX, ISSUE X, ISSUE XIII,  
ISSUE XIV, AND ISSUE XV

ARGUMENT ON ASSIGNMENT OF ERROR ON  
ISSUE IX, ISSUE X, ISSUE XIII,  
ISSUE XIV AND ISSUE XV

The question of whether plaintiff would be permitted to recover from defendant, John G. Schwegmann, Jr., on a theory of quantum meruit/quasi-contract/IMPLIED CONTRACT was dismissed as between plaintiff and defendant, and the judge further ruled that any further relief as against other defendants would not be granted unless it was proven that it was not interwoven with the

concubinage. The law clearly enforces contractual rights as between a common-law spouse and third parties (Jackson, supra and Henderson, supra). The law would not prevent the Court from examining the facts surrounding the enrichment of all named defendants and that examination of facts cannot be excluded because the party seeking recovery lived in a status of concubinage. None of the concubinage cases suggest this extension of the present law (See all cases on the Concubinage Index).

Plaintiff testified that she rendered services to the corporate defendants (See Facts), to John F. Schwegmann (See Facts), and to Margie Schwegmann (See Facts). She is entitled to relief from all other defendants..

Equitable relief encompasses a quasi contract, quantum meruit, unjust

enrichment and/or implied contract. Louisiana law provides equity to parties where there is no other available remedy. Louisiana Civil Code Article 21 provides that when there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason or received usages where positive law is silent and Louisiana Civil Code Article 1965 which allows the court to apply the principles of equity when the law of the land and that which the parties have made for themselves by their contract are silent. Courts must apply principles of the moral maxim stated in Louisiana Civil Code Articles 1965, 2301, 2294, 2295, and 2293. Both Code articles were derived from corresponding French codal articles. In Louisiana law, equity is an ideal of

justice, serves as a guide for the formulation of legislative precepts, to correct justice in particular cases and to fill the unavoidable gaps of positive law. Unjust enrichment is defined within the context of Louisiana law relying expressly on Article 21 and 1965 of the Civil Code. (Minyard v. Curtis Products, Inc., 205 So.2d 422 (1967)). The Court can apply the above articles for an equitable solution in the absence of positive law (Jacob v. Roussel, 100 So. 295) and in the absence of procedural law governing the action (Crescent City Gaslight Co. v. New Orleans Gaslight Co., 27 La. Ann 138 (1975)). The Court used equity to proportion a distribution of loss among several insurance companies (Ouachita Parish Police Jury v. Anchor and Co.

176 So. 639 (2nd Cir. 1937)).

The present matter falls within the category of cases which would allow recovery based on the theory of unjust enrichment [sic] which is based on Articles 21 and 1965 of the Civil Code (Segura Realty Co. v. Segura Sugar Co., 82 So. 684 (1919); LeBlanc v. City of New Orleans, 70 So. 212 (1915)).

There must be an enrichment and impoverishment. There must be a connection between the enrichment and the resulting impoverishment and there must be an absence of cause for the enrichment and the impoverishment; and recovery will be allowed where there is no other remedy at law (Edmonston v. A-Second Mortgage Co. of Slidell, Inc., 289 So.2d 116 (S.Ct. 1974)).

ASSIGNMENT OF ERROR ON ISSUE III

ARGUMENT OF LAW ON ISSUE III

The facts would also establish a constructive trust. All defendants were enriched and the Court must examine the facts to establish the amount of recovery. A constructive trust has been enforced in the State of Louisiana, primarily when the Courts were unable to reach a legal and equitable solution under existing Louisiana law as regards the parties fiduciary responsibility.

The concept is based on a fiduciary responsibility between two parties.

An agent owned the utmost fiduciary responsibility to the principal and cannot acquire an adverse interest to the principal. A common problem is when an agent comingles the principal's property with his own property and transfers the property to his own name. The Courts must resolve the ownership

rights of the principal when the property may have become the property via the actions of the agent. Louisiana jurisprudence has held that agents cannot become the owners of property which an agent had the management of and which belongs to the principal; said property must be considered to be held in a constructive trust for the principal (Housewright v. Steinke, 158 N.C. 138); Assunto v. Coleman, 1094 So. 138 (S.Ct. 1925); McClendon v. Bradford, 7 So. 78 (S.Ct. 1899).

The following cases establish that a constructive trust is recognized in Louisiana (Sentell v. Richardson, 29 So.2d 8521 (S.Ct. 1947); Succession of Ononato, 51 So.2d 804 (S.Ct. 1951); Alley v. Miranon, 614 F.2d 1397 (5th Cir. 1980); New England Mutual Life Ins. Co. v. N. C. Randall, 42 La. Ann. 260.



The constructive trust is used as an equity vehicle to create a principal agent relationship and to provide all fiduciary responsibilities as between the parties (Voss v. Mike & Tony's Steak House, 230 So.2d 470 (1st Cir. 1970); Succession of Heckert, 160 So.2d 375; Bosworth v. New Orleans Federal Sav. & Loan Assn., 258 So.2d 191.

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The remaining portion of the Petition for Writ of Certiorari and Review pertaining to the issue of whether the Court should have considered the recusal of all of defendants' attorneys despite the absence of one attorney of record for defendant has been omitted, as irrelevant to the proceedings now before the Court.

## CONCLUSION

The developments of law defining the rights of unmarried parties who live together and have sex developed on a case by case basis, there is no statute or code article which gives the courts guidance vis-a-vis the rights of the parties.

Will the moral fiber of a society which already has a lifestyle which sees over fifty percent of all marriages end in divorce be eroded by extending basic fundamental rights to parties who live together? To ignore the reality of life in that parties do live together [sic], do work, do pay taxes, do have children, do make contributions to society is to not acknowledge that society has changed since the 1800's. John G. Schwegmann, Jr. ran for governor and was elected to

numerous political offices. Additionally, as a result of his businesses, he paid many dollars into the coffers of the state. Did this couple add to the demise of society?

Plaintiff and defendant did not expect their relationship to be treated like a marriage, however, they should have basic rights to litigate contractual rights in the State Courts. To extend the Fifth Circuit's opinion two professional male and female who practice together and also live together have sex with one another could find out that they have lost any rights to seek legal redress in the Courts of the State of Louisiana.

It is a dangerous trend to deny any part of society access to courts of law, as the judicial system is the only method in a civilized society to redress a

grievous [sic]. Can we honestly say that allowing unmarried couples to litigate in a court of law will contribute to a demise in civilized society, especially since society has changed radically since the 1800's. Some would say there already had been a demise in society. This plaintiff is not asking for any rights other than one to have her case heard in a court of law. The court is not giving her anything as her case will stand or fall on its merits as will all other cases.

The Supreme Court for the State of Louisiana has the capacity to address this body of law and clarify for the State the legal remedies [sic] available to unmarried couples.

Respectfully submitted,

s/ Bettianne Lambert-Bussoff  
BETTYANE LAMBERT-BUSSOFF  
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## APPENDIX D

# APPENDIX "D"

MARY ANN SCHWEGMANN	231-175
a/k/a	
MARY ANN BLACKLEDGE	24th JUDICIAL DISTRICT COURT
VS.	
JOHN G. SCHWEGMANN, JR., JOHN F. SCHWEG- MANN, MELBA MARGARET SCHWEGMANN, AND SCHWEGMANN BROS. GIANT SUPERMARKETS, INC., SCHWEGMANN BROS. TERMINAL, INC., SCHWEG- MANN BROS., INC., SCHWEGMANN BROS. WEST- BANK, INC., SCHWEGMANN BROS. WESTSIDE CORPOR- ATION AND SCHWEGMANN VETERANS CORPORATION	PARISH OF JEFFER- SON  STATE OF LOUISIANA  FILED FOR RECORD OCT 5 10 50 AM '79  <hr/> DY CLERK OF COURT Parish of Jefferson LA

DIV. B  
JUDGE  
FRANK V. ZACCARIA

FILED: \_\_\_\_\_  
DEPUTY CLERK

## PETITION FOR:

1. SPECIFIC PERFORMANCE AND/OR DAMAGES BASED ON BREACH OF CONTRACT,
2. FOR THE RECOGNITION OF CONSTRUCTIVE TRUST OR DAMAGES BASED ON IMPLIED CONTRACT,
3. DECLARATORY RELIEF,
4. QUASI CONTRACT AND/OR QUANTUM MERUIT,

5. INTERFERENCE OF CONTRACT RIGHTS, AND
6. DECLARATION OF SIMULATION AND/OR REVOCATORY ACTION

Now into Court comes MARY ANN BLACKLEDGE, herein represented by her undersigned counsel, a person of the full age of majority and a resident of the Parish of Jefferson, State of Louisiana, with respect represents that:

FIRST CAUSE OF ACTION

Specific performance and/or damages based on breach of contract

1. Defendants, JOHN G. SCHWEGMANN, JR., JOHN F. SCHWEGMANN and MELBA MARGARET SCHWEGMANN are all persons of the full age of majority, residents of the Parish of Jefferson, and Schwegmann Bros. [Sic] Giant Supermarkets, Inc., Schwegmann Bros. Terminal, Inc., Schwegmann Bros. Inc., Schwegmann Bros. Westbank, Inc., Schwegmann Westside Corporation



and Schwegmann Veterans Corporation are all Louisiana corporations domiciled in the Parish of Jefferson, are all liable in solido unto plaintiff in the amount of THIRTY MILLION AND NO/100 (\$30,000,000.00) DOLLARS plus legal interest and reasonable attorney's fees and all court costs for the following to wit:

2.

On the 15th day of May, 1966, plaintiff and defendant, JOHN G. SCHWEGMANN, JR. (hereinafter referred to as "SCHWEGMANN"), entered into a contractual agreement whereby each agreed that they would live together and that during the time thereafter that the parties lived together, they would combine their skills, efforts, labor and earnings and would share equally any and all assets and property acquired and/or accumulated as a result of said joint skills, efforts,

labor and earnings.

3.

Shortly after entering into the contractual agreement, the agreement was modified in that plaintiff had to give up and forego her lucrative career in business management in order that she would devote her full time to the above described duties plus become actively involved in the daily management of the business affairs of plaintiff and defendant, SCHWEGMANN, that included without limitation the following:

- a) plaintiff was actively involved in the policy decisions, both daily and long term, of the Schwegmann Bros. Giant Supermarkets for 13 years;
- b) plaintiff was actively involved with the acquisition of property, expansion programs

and construction of new stores for Schwegmann Bros. Giant Supermarkets;

c) plaintiff was actively involved in the management of all other existing and subsequently created Schwegmann Bros. Giant Supermarkets;

d) plaintiff stood with SCHWEGMANN in his fight to make the Schwegmann stores unique and a financial success. Defendants reaffirmed that plaintiff had an equal interest in the stores both by SCHWEGMANN, John F. Schwegmann and Melba Margaret Schwegmann.

e) plaintiff was actively involved in the daily editorials put forth in the news media by SCHWEGMANN and Schwegmann

Bros. Giant Supermarkets;

f) plaintiff was actively involved in other investments made on behalf of the joint enterprise of plaintiff and SCHWEGMANN;

g) plus other duties, services and activities to be shown at the trial of this matter.

4.

It was further agreed that during the time the parties lived together, plaintiff and defendant would hold themselves out in the general public as husband and wife, plaintiff would further render services as a companion, homemaker, housekeeper and cook to SCHWEGMANN, act as mother to defendants, John F. Schwegmann and Melba Margaret Schwegmann, raise them as if they were her own children and thereby contribute her skills, efforts,

labor and earnings toward the acquisition and accumulation of property.

5.

In addition to the above duties, plaintiff was also required to assist SCHWEGMANN in his political career and to devote considerable time and effort to his political elections.

6.

Defendant, SCHWEGMANN, further agreed that he would provide for all of plaintiff's financial support and needs for the rest of her life in the same style and manner that was established during the time that the parties lived together consistent with defendant SCHEGMANN's estimated annual earnings in excess of ONE MILLION AND NO/100 (\$1,000,000.00) DOLLARS per year.

7.

It was further agreed that the assets and properties would remain in

the name of SCHWEGMANN and/or corporations directly or indirectly controlled by him.

8.

Pursuant to, in confirmation of, and in reliance upon the above described agreement, plaintiff and SCHWEGMANN lived together continuously from the 15th day of May, 1966 until the 11th day of May, 1978.

9.

Plaintiff has at all times performed each and every covenant, obligation and condition required to be performed and rendered the above described services, skills, efforts, labors and earnings as required by the terms of the agreement.

10.

During the time that plaintiff and SCHWEGMANN lived together, they

acquired as a result of their skills, efforts, labors and earnings, assets and property valued at SIXTY MILLION AND NO/100 (\$60,000,000.00) DOLLARS consisting in part of the value of the corporate stock of the defendant corporations created by the joint efforts of plaintiff and SCHWEGMANN plus other assets and properties to be shown at the trial of this matter.

11.

On or about the 11th day of May, 1978, at SCHWEGMANN's request and insistence, plaintiff was asked to leave defendant, SCHWEGMANN's household and sever all business relationships.

12.

Despite repeated demands, the defendants refuse to recognize any ownership rights in the assets and properties accumulated by plaintiff and SCHWEGMANN,

even though in thirteen (13) years all of the defendants continually and openly recognize that the assets and properties belonged to both plaintiff and SCHWEGMANN.

13.

On information and belief, beginning in the early part of 1978, defendants John F. Schwegmann and Melba Margaret Schwegmann and the defendant corporations began to assert influence and control over the business and personal affairs of SCHWEGMANN that included requiring SCHWEGMANN to transfer to one or more of the defendants all of his corporate stock in the defendant corporations and possibly other assets and property and have continuously refused to recognize plaintiff's ownership interest in one half (1/2) of the corporate stock and continue to refuse to transfer, convey, assign and pay over to plaintiff



her equal share of the property, earnings, and accumulations contrary to the terms and conditions of the agreement.

14.

At all times material herein, all of the defendants recognized the above described agreement, accepted all the benefits of the agreement and ratified the agreement, if required to do so, when they were capable of doing so as a matter of law.

15.

The services performed by plaintiff for the defendants and the contributions of plaintiff's skills, efforts, labors and earnings under and pursuant to the agreement is adequate consideration for her ownership interests in said assets, property, earnings and accumulations plus the lifetime support to be furnished and provided by plaintiff

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and the said consideration and agreement are just, fair, reasonable and equitable in all respects.

16.

Defendants have received and will continue to receive during the pendency of this action, rents, issues and profits from jointly owned assets and property in an amount of which plaintiff is uncertain and cannot ascertain without an accounting from defendants, and an undivided fifty (50%) percent of which belongs solely and exclusively to plaintiff.

17.

All defendants have each refused to honor the agreement and have breached the agreement.

18.

Some of the joint assets and property, include the following:

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a) Corporate stock in the defendant corporations. acquired in the name or names of one or more of the defendants pursuant to the above described agreement are unique in character in that there exists no other properties substantially similar thereto; and as a result of the defendants' breach of the agreement, plaintiff has no adequate remedy at law and monetary damages will be inadequate to compensate plaintiff for the detriment suffered by her.

19.

Therefore plaintiff is entitled to a judgment ordering the defendants to transfer to her an undivided one-half (1/2) interest in the properties listed in paragraph 18.

#### SECOND CAUSE OF ACTION

To Impress Constructive Trust of  
Damages Based on Breach of

Implied in Fact Contract.

20.

Plaintiff realizes and incorporates all previous paragraphs of this petition.

21.

During the course of time that plaintiff and defendant SCHWEGMANN lived together, said parties conducted their relationship in a manner and with the same force and effect as husband and wife, did hold themselves out publicly as husband and wife, and in so doing dealt with each other in a fair and trusting manner thereby creating in both Plaintiff and Defendant SCHWEGMANN a reasonable expectation and belief that the aforesaid understanding and agreement existed between Plaintiff and Defendant, SCHWEGMANN; in particular the parties acted as follows:

- a) travelled on vacations and business trips worldwide;
- b) plaintiff gave up her career and children of her own to devote her full attention to the business, personal and political goals of SCHWEGMANN and his children, with the continued assurances that she would be secure and share equally the assets and income which were and to be accumulated;
- c) plaintiff at all times acted as a homemaker, companion, cook, and confidante to defendant SCHWEGMANN, and his personal advisor;
- d) plaintiff took care of defendant SCHWEGMANN on each and every occasion

when he was ill to the extent that she was able and expecially [sic] in 1977 when he was hospitalized with a stroke;

- e) plaintiff and SCHWEGMANN mutually planned their financial future together for the rest of their lives and were introduced to innumerable people throughout the world as if Plaintiff were the lawful wife of defendant SCHWEGMANN;
- f) plaintiff devoted all aspects of her life to defendant, SCHWEGMANN's interests and well being to the exclusion of her own;
- g) throughout the period of time the parties lived

together, defendant SCHWEG-  
MAN always assured Plain-  
tiff that she would always  
be financially compensated  
and be secure for the rest  
of her life and it made  
no difference that they  
were not legally married.

h) plaintiff and SCHWEGMANN  
enjoyed and maintained dur-  
ing the course of their  
relationship a standard  
of living SCHWEGMANN pro-  
mised to maintain for Plain-  
tiff for the rest of her  
life.

i) plaintiff and SCHWEGMANN  
discussed all earnings and  
acquisitions required dur-  
ing the course of their  
relationship on the same

basis as if the two of them were joint partners and/or joint venturers.

22. \_\_\_\_\_.

Thereafter, in confirmation of this mutual understanding between Plaintiff and Defendant SCHWEGMANN, Plaintiff and Defendant SCHWEGMANN understood that all skills, efforts, labor and earnings and all property acquired therewith, that each party has performed, expended or contributed, were to be treated as their joint property. Each party understood that, although one party may retain title, possession, custody, and/or control of the joint property, he or she would account for such property to the other party at the termination of the relationship when either party manifested an intent to discontinue living together with the other party.



23.

At the time Plaintiff and Defendant SCHWEGMANN commenced living together and at all times during their relationship while they lived with each other, the most confidential relations existed between Plaintiff and Defendant, SCHWEGMANN and Plaintiff reposed the greatest confidence and trust in Defendant SCHWEGMANN. She entrusted Defendant SCHWEGMANN to manage and care for all the joint property acquired and accumulated through the joint efforts of Plaintiff and Defendant SCHWEGMANN. By reason of this confidence reposed in Defendant SCHWEGMANN and of which Defendant SCHWEGMANN did retain title, possession, custody and control of the joint property herein described.

24.

On or about the 16 day of May,

1978, at Defendant SCHWEGMANN's request, Plaintiff was forced to leave the parties' household, and Plaintiff and Defendant SCHWEGMANN at said time, ceased to live with each other; and Defendant SCHWEGMANN at said time informed Plaintiff that he had no intention of continuing to live with her. Plaintiff thereupon requested that Defendant SCHWEGMANN account to her for all of the joint property acquired and accumulated during the period in which they lived with each other.

25.

By reason of the trust and confidence Plaintiff resposed in Defendant SCHWEGMANN, Plaintiff relied on Defendant SCHWEGMANN to perform his agreement with Plaintiff and to disclose fully all of the joint property of the parties, its nature, extent and value, and relied on Defendant SCHWEGMANN to divide the joint

property of Plaintiff and Defendant SCHWEGMANN in a manner that would result in a substantially equal division of the property. Defendant SCHWEGMANN knew and was apprised of the trust and confidence so reposed in him by Plaintiff.

26.

In response to Plaintiff's request to account for all joijnt property acquired and accumulated through the joint efforts of Plaintiff and Defendant SCHWEGMANN, Defendant SCHWEGMANN violated the confidence PLaintiff had placed in him and repudiated the mutual understanding that had existed during the period in which Plaintiff and Defendant SCHWEGMANN had lived with each other by refusing and continuing to refuse to account for any property in his possession, custody and control, and by refusing and continuing to refuse to disclose to

Plaintiff the nature, extent, and value of the joint property.

27.

By reasons of the violation of the confidence Plaintiff had placed in Defendant SCHWEGMANN and of the repudiation of the mutual understanding between Plaintiff and SCHWEGMANN respecting the treatment of all property acquired and accumulated through the skill, efforts, labor and earnings of Plaintiff and Defendant SCHWEGMANN and each of them, Defendant SCHWEGMANN is an involuntary trustee holding one-half of the joint property and the rents, issues, and profits therefrom in constructive trust for Plaintiff with the duty to convey the same to her forthwith pursuant to Article 21 of the Louisiana Civil Code.

THIRD CAUSE OF ACTION

Declaratory Relief

28.

Plaintiff realleges and incorporates all previous allegations of the petition.

29.

That an actual controversy has arisen between plaintiff and defendants, and each of them, relating to the legal rights, duties and obligations of said parties, to wit:

- a) as a result of said agreement and said acquisition of the assets and property, Plaintiff is the owner of one-half (1/2) of all of said assets and property as a tenant in common with defendants.

- b) that defendant SCHWEGMANN

has the duty and obligation to pay Plaintiff a reasonable sum as and for her support and maintenance.

30.

That all of said assets and property were acquired while the parties were living in Jefferson Parish, Louisiana, are located in this state and should be treated as would community property if there had been a valid marriage entered into between Plaintiff and Defendant SCHWEGMANN; and that to not enforce her rights in this regard would constitute a denial of due process and equal protection of the law under the United States and Louisiana State Constitutions.

31.

If recovery is denied by the court because of its interpretation of existing statutes and laws (Putative

spouse codal articles, and concubinage codal articles) the court will have unconstitutionally discriminated against plaintiff and all persons similarly situated and in the alternative the codal articles and laws are unconstitutional.

32.

That defendants are estopped from denying the validity or effectiveness of said agreement by reason of:

- a) Defendant SCHWEGMANN's intentional inducement of Plaintiff to abandon her career;
- b) Plaintiff's abandonment of her career in reliance on the agreement and defendant's continuous representations to her that said agreement was binding and effective;

- c) The irreparable financial loss to Plaintiff by reason of her having so abandoned her prior career;
- d) The benefits derived by defendants from the agreement.

33.

In the alternative, should this Court not enforce the said agreement, Plaintiff by reason of the facts here above alleged, has suffered damages in excess of \$500,000.00. The exact amount of said damages have not been presently ascertained by Plaintiff who will ask leave to amend this petition to insert the exact amount upon ascertainment of same or according to proof.

34.

Plaintiff is informed and believes and upon such information and



belief alleges that defendants will deny each and all of Plaintiff's contentions and will specifically deny that the agreement was entered into between Plaintiff and defendant, SCHWEGMANN, and further deny that plaintiff is entitled to one-half of the assets and property or has any right to support and maintenance from defendant SCHWEGMANN.

35.

That no adequate remedy exists other than herein prayed for by which the rights of the parties hereto may be determined.

36.

The amount of people living together and how various jurisdictions have dealt with this situation can be seen by reference to "property Right of Unmarried Couples: Who Gets What When the Cohabitation Collapses",

Community Property Journal, (Summer 1979)

by Marianne M. Jennings and Bruce K. Childers, a copy of which is attached as Exhibit A.

FOURTH CAUSE OF ACTION

Quasi Contract and/or Quantum Meruit

37.

Plaintiff realleges and incorporates all previous allegations of the petition.

38.

During the period of May 15, 1966, and May 11, 1978, at Jefferson Parish, Louisiana and elsewhere, defendants became indebted to plaintiff for services rendered by Plaintiff to defendants at the special insistence and request of said defendants and which said defendants agreed to pay plaintiff.

39.

The reasonable value of said

services was and is the sum of at least TWO MILLION AND NO/100 (\$2,000,000.00) DOLLARS together with interest thereon at the legal rate from the time that is occurred.

FIFTH CAUSE OF ACTION

Interference of Contract Rights

41.

Plaintiff realleges and incorporates all previous allegations of this petition.

42.

At all times material herein, plaintiff had valuable contractual rights that were legally protected.

43.

The interference with these rights by defendants John F. Schwegmann, Melba Margaret Schwegmann and the defendant corporations were the cause of plaintiff suffering the damages of which she com-

plaints.

44.

Defendants John F. Schwegmann, Melba Margaret Schwegmann and the corporate defendants were fully aware of the contractual agreements between plaintiff and SCHWEGMANN prevented the performance of the agreement that would have herein been performed by SCHWEGMANN.

45.

Plaintiff is entitled to the damages from these named defendants in the same amounts as sought in her other causes of actions.

#### SIXTH CAUSE OF ACTION

Declaration of Simulation and/or  
Revocatory Action.

46.

Plaintiff realleges and incorporates all previous allegations of this petition.

47.

At all times material herein, plaintiff was and is a creditor of defendant SCHWEGMANN.

48.

In the early part of 1979 defendant SCHWEGMANN executed a purported act of sale of his corporate stock in the defendant corporations to his son, John F. Schwegmann for the sum of FORTY MILLION AND NO/100 (\$40,000,000.00) DOLLARS.

49.

Plaintiff avers that the purported act of sale is a simulation and had no reality or substance whatsoever, as more fully set forth below.

50.

Plaintiff is informed and believes and on information and belief alleges that the purported consideration

of FORTY MILLION AND NO/100 (\$40,000,000.00) DOLLARS was never paid by John F. Schwegmann or was ever to be paid and this was done to create the appearance of the transfer of consideration.

51.

SCHWEGMANN has retained possession and control of the corporate stock, and/or the defendants that influence and control SCHWEGMANN control the corporate stock on his behalf.

52.

In the alternative and only in the event that this Honorable Court should find that the purported sale is not a simulation, plaintiff avers that the purported act of sale described above was done in fraud of plaintiff's rights as a creditor of SCHWEGMANN and in order that John F. Schwegmann and the other defendants could obtain an illegal pre-

ference over plaintiff.

53.

On the date of the purported act of sale, John F. Schwegmann was a creditor of SCHWEGMANN and the property transferred was given over in satisfaction of a pre-existing debt owed to John F. Schwegmann by SCHWEGMANN and no sum of money whatsoever was paid for the corporate stock in the said transaction.

54.

Plaintiff is informed and believes and on information and belief alleges that at the time the purported act of sale took place, SCHWEGMANN was insolvent and John F. Schwegmann knew of such insolvency and entered into the fraudulent agreement in order to obtain an illegal preference over plaintiff.

55.

In the further alternative, if it should be shown that any sum of money whatsoever was paid by John F. Schwegmann to SCHWEGMANN as the purchase price of the corporate stock, which plaintiff specifically denies, plaintiff alleges that such sum was far below the true value of the property which plaintiff alleges to have been FORTY MILLION AND NO/100 (\$40,000,000.00) DOLLARS as of the date of the purported sale.

56.

In the further alternative plaintiff alleges on information and belief that at the time of the act of sale SCHWEGMANN did not have over the amount of his debts more than twice the amount of the property passed by the gratuitous contract.



**WHEREFORE, Plaintiff prays  
for the following alternative relief:**

**1. For judgment in solido  
in the amount of THIRTY MILLION AND NO/  
100 (\$30,000,000.00) DOLLARS plus legal  
interest and attorney fees against  
SCHWEGMANN, John F. Schwegmann, Melba  
Margaret Schwegmann and Schwegmann Bros.  
Terminal, Inc., Schwegmann Bros. Inc.,  
Schwegmann Bros. Westbank, Inc.,  
Schwegmann Westside Corporation and  
Schwegmann Veterans Corporation;**

**2. That defendants be compelled  
to account for all joint property and  
assets acquired and accumulated through  
the skills, efforts, labor and earnings  
of plaintiff of SCHWEGMANN and each of  
them;**

**3. That this Court declare  
that Plaintiff has an undivided one-half  
interest in all assets and property as**

described within this petition, as a tenant in common with defendants;

4. That this Court order a division of said assets and property according to the respective rights of the parties, or if it appears that a division cannot be had without great prejudice to the parties, that a sale of the said property be ordered and the proceeds thereof be divided between the parties according to their respective rights;

5. That the Court determine that as actual or fictitious partnership has been created by the conduct of the parties of all of the said assets and property and, that thereafter, the Court dissolve the said partnership and distribute the property to the respective parties;

6. That the Court declare that defendants hold an undivided one-half interest in all of said assets or property as Trustee for plaintiff, and that plaintiff is the owner of an undivided one-half interest therein;

7. That the Court order defendants to execute such instruments that shall be necessary to transfer to plaintiff her one-half interest in said assets and property;

8. For a declaration of the rights and interests of the parties in and to the said assets and property;

9. That this Court declare that Plaintiff has an undivided one-half interest in all of the said assets and property;

10. For damages arising out of said defendants SCHWEGMANN breach of said contract agreement;

11. That defendant SCHWEGMANN be ordered to pay to Plaintiff a reasonable sum per month as and for the support and maintenance of Plaintiff;

12. For the reasonable value of plaintiff's services;

13. For costs of suit incurred herein;

14. For judgment declaring the purported sale of corporate stock to be a simulation, annulling and setting aside the act of sale and decreeing the said property to be subject to execution under any money judgment rendered in this proceeding in favor of plaintiff.

15. If the Court finds that the act of sale is not a simulation, there be judgment declaring the sale in fraud of plaintiff's rights as creditor of SCHWEGMANN and declaring the said sale to be null and void, and the property

to be subject to execution under any money judgment rendered in this proceeding in favor of plaintiff;

16. If the Court finds any sum of money was paid by John F. Schwegmann as the purchase price of the sale of the corporate stock, there be judgment declaring the sale to be made in fraud of plaintiff's rights as a creditor of SCHWEGMANN and declaring said sale to be null and void and any money paid as the purchase price has innured to plaintiff's benefit as a creditor of SCHWEGMANN by adding in any way to the amount of money in the hands of the said SCHWEGMANN and applicable to the payment of the debt owed to plaintiff and declaring that John F. Schwegmann is not entitled to the restitution of any price or consideration he may have paid because of the fraud of John F. Schwegmann and

decreeing the corporate stock to be subject to execution under any money judgment rendered in this proceeding in favor of plaintiff;

16. For a judgment declaring the Putative spouse codal articles, Succession codal articles, and concubinage codal articles unconstitutional.

17. For such other and further relief as the Court may deem just and proper.

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PLEASE SERVE:



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New Orleans, Louisiana
2. John F. Schwegmann  
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New Orleans, Louisiana
3. Melba Margaret Schwegmann  
112 Green Acres Road  
Metairie, Louisiana
4. Schwegmann Bros. Giant Super-  
markets, Inc.,  
Schwegmann Bros. Warehouse, Inc.,  
Schwegmann Bros. Inc.,  
Schwegmann Bros. Westbank Inc.,  
Schwegmann Westside Corporation,  
and  
Schwegmann Veterans Corporation  
  
all through their agent for  
service of process
5. William J. Guste, Jr.  
Attorney General  
State of Louisiana  
2-3-4 Loyola Avenue  
New Orleans, Louisiana

## APPENDIX E



APPENDIX "E"  
SUPREME COURT  
OF THE STATE OF LOUISIANA

MARY ANN BLACKLEDGE                      No. 83-C-2500  
a/k/a MARY ANN SCHWEGMANN

VS.

JOHN G. SCHWEGMANN, JR.

---

In re: MARY ANN BLACKLEDGE  
a/k/a MARY ANN SCHWEGMANN

Applying for writ of Certiorari and  
Review to the Fifth Circuit Court of  
Appeal No. 83-CA-305, from the 24th  
Judicial Court, Parish of Jefferson,  
No. 231-175.

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January 6, 1984

DENIED

JAD  
PFC  
WFM  
JLD  
FAB  
JCW  
HTL

Supreme Court of  
Louisiana  
January 6, 1984

Frans. J. Labranche,  
Jr.  

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Clerk of Court  
for the Court

NO. 83-1630

Office - Supreme Court, U.S.

FILED

MAY 17 1984

ALEXANDER L. STEVENS,  
CLERK

In the  
Supreme Court of the United States

OCTOBER TERM, 1983

MARY ANN BLACKLEDGE,

PETITIONER

VS.

JOHN G. SCHWEGMANN, JR., ET AL.,

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF LOUISIANA

BRIEF FOR RESPONDENTS IN OPPOSITION

David Stone

Jo Harriet Strickler

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NO. 83-1630

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

MARY ANN BLACKLEDGE,

PETITIONER

VS.

JOHN G. SCHWEGMANN, JR., ET AL.,

RESPONDENTS

---

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF LOUISIANA

---

BRIEF FOR RESPONDENTS IN OPPOSITION

---

This case is not remotely worthy of the attention of this Court on certiorari. The case turns on questions of state law. It does not involve any federal question as to which there is a conflict among state or federal courts. The state court did not uphold the constitutionality of any state statute. The case does not meet any of the criteria for granting certiorari stated in 28 U.S.C. §1257(3).

## STATEMENT OF THE CASE

This is a "palimony" case. The petitioner, Mary Ann Blackledge, says that one day in 1966 John Schwegmann told her he wanted to "share everything" with her and that she

and property rights is well known. Louisiana's strong continuing interest in the institution of marriage prevents the marriage relationship from being terminable at will. Without court scrutiny and approval, the parties cannot end their marriage relationship, determine custody, finalize property rights or determine support. The state does not have the same interest in or control over the relationship of unmarried cohabitants.

Conferral of quasi-community property rights on unmarried cohabitants would cause the status of property ownership in Louisiana to become chaotic. Marriages, marriage contracts, and divorces are all a matter of public record. A casual or long-term liaison, however, cannot be found on the public records, and may in fact be kept secret intentionally by the participants. The possibility of concurrent liaisons, or liaisons concurrent with an existing community of one or both of the persons involved in the liaison, would make Louisiana property law a tangle of uncertainty. Immense and obvious practical difficulties would result from the granting of implied property rights on the basis of cohabitation, including the problem of defining which relationships would and which would not qualify for quasi-marital "rights", and the problems of determining the extent and nature of such rights and of identifying the assets to which they would apply. These difficulties would compound geometrically in the cases that would inevitably arise involving competing claims of two or more cohabitants (concurrent or consecutive) of the same defendant.

The equal protection clause does not obligate the State of Louisiana to step into these uncertainties, or to consign the institution of marriage to the Victorian relic heap.

**C. This Case Presents No Conflict of State Law  
Involving a Federal Question.**

Miss Blackledge asserts in her petition for writ of certiorari that this Court should grant certiorari because of an asserted "conflict" between *Marvin v. Marvin*, 18 Cal.3d 660 (1976) and this case.

In *Marvin v. Marvin*, *supra*, the California Supreme Court, applying and expanding the law of California, held that an implied contract between non-marital partners should be enforced to the extent that the contract was not explicitly founded on the consideration of unlawful sexual services. The California court also approved the use of the theories of implied contract and quantum meruit in dealing with the property of non-married cohabitators. No aspect of the *Marvin* decision purported to interpret federal law. In every respect the court was interpreting only California law. A "conflict" between California law and Louisiana law involving no federal issue is not grist for this Court.

**CONCLUSION**

It is respectfully submitted that petitioner has wholly failed to sustain her burden of establishing under Rule 17 that there are special and important reasons why the writ should be granted. The decision below did not involve an important question of federal law as to which a conflict exists. The Court below correctly decided the issue of express contract on a state ground independent of any federal question. This Court should deny petitioner's request for writ of certiorari.

Respectfully submitted,

---

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Schwegmann Giant Super Markets, Inc.



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said "okay." She contends that this alleged conversation constituted a "contractual agreement" under which she acquired an ownership interest in all Mr. Schwegmann's property. This would have been a very good deal for Miss Blackledge, since Mr. Schwegmann then owned a chain of supermarkets and other substantial assets, and she had nothing whatsoever. The "contractual agreement" was never reduced to writing, and there were no witnesses to the alleged conversation.

Miss Blackledge lived in Mr. Schwegmann's house for twelve years. She claims that she performed various household duties and took care of Mr. Schwegmann's daughter. She also claims that she advised Mr. Schwegmann on his political career and the management of his grocery stores, helped write editorials for the Schwegmann Supermarkets newspaper advertisements, and gave Mr. Schwegmann investment advice.<sup>1</sup> The parties stopped living together in May 1978. More than a year later, in October 1979, Miss Blackledge filed this lawsuit.

### COURSE OF THE PROCEEDINGS BELOW

The petitioner sued John G. Schwegmann, Jr., his children and various corporations seeking ownership of half Mr. Schwegmann's property, damages for breach of an alleged oral contract, and other relief, including recovery on

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<sup>1</sup> For present purposes, we forego detailed discussion of those portions of Miss Blackledge's deposition demonstrating that she had no business or financial background or qualifications, and was unfamiliar with the most fundamental business concepts (e.g. did not know the meaning of such terms as "creditor" and "liability"); that she knew surprisingly little about Mr. Schwegmann's business, considering that she lived with him for twelve years and shopped regularly in his stores; and that she could not recall any editorials she had written for Schwegmann advertisements except for a recipe for meatball gravy and an obituary for one of Mr. Schwegmann's dogs.

a theory of quantum meruit. The Louisiana district court granted summary judgment for respondents on all claims made by petitioner except a portion of her claim for recovery under the theory of quantum meruit. The decision of the district court was unanimously upheld by the Louisiana Fifth Circuit Court of Appeal. *Schwegmann v. Schwegmann*, 441 So.2d 316 (La. App. 5th Cir. 1983). The Louisiana Supreme Court unanimously denied petitioner's application for writ of certiorari or review. *Schwegmann v. Schwegmann*, 443 So.2d 1122 (La. 1984).

## ARGUMENT

### A. The Decision of the Louisiana Courts Rejecting the Petitioners' Claim for Breach of Contract Rests on an Independent State-Law Ground.

The petitioner claims that in 1966 she and John Schwegmann entered an oral contract to pool their assets and share their earnings. The Louisiana courts below held that this alleged contract, even if proved, would have constituted a type of agreement then classified by Louisiana law as a "universal partnership", which could not be valid unless made in writing. La. Civ. Code arts. 2829 and 2834 (repealed by Acts 1980, No. 150). On the basis of this independent state-law ground, the Louisiana courts rejected the petitioner's contract claim.

The petitioner contends that an amendment of Louisiana partnership law, which did not become effective until January 1, 1981, somehow retroactively validated the oral universal partnership that she claims to have entered in 1966, and terminated in 1978. The petitioner made the same argument in the Louisiana courts, without success. The 1981 amendment of the Louisiana partnership law applies

prospectively to existing partnerships, but does not purport to have retroactive effect. More to the point, the issue of the retroactivity of the 1981 changes in the Louisiana partnership law is, purely and simply, a matter of state law, involving no constitutional or other federal question.<sup>2</sup>

The petitioner also suggests that the Louisiana court's rejection of her contract claim "appears to be predicated, albeit tacitly, on La. Civil Code Article 1481", which prohibits certain *gifts* between persons who cohabit without benefit of marriage—a provision that the petitioner attacks as being violative of the United States constitution. But Article 1481 has nothing to do with any issue presented to or decided by the Louisiana courts in this case, and there is not the faintest suggestion in the opinions below of reliance on that provision. Article 1481 deals only with donations, and is irrelevant to the partnership and contract principles that are dispositive of the petitioner's claims. The issue of the constitutionality of Article 1481 is a bogus issue, one that is not raised by this case.

#### B. The Equal Protection Clause Does Not Require a State to Confer Community Property Rights on Unmarried Cohabitants.

Under Louisiana law, property acquired by either spouse during marriage, other than by gift or inheritance, is community property, in absence of a marriage contract. Miss Blackledge, under a theory of "implied" contract, argues in effect that the law of Louisiana should also impose a form of community property regime upon unmarried cohabitants, by implying rights of one cohabitant in the

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<sup>2</sup> The courts below also held, as an alternative and independent ground, that the alleged oral contract was meretricious and therefore invalid under Louisiana law.

property of the other. Once again attacking Article 1481 of the Louisiana Civil Code, Miss Blackledge argues that Louisiana law makes an impermissible distinction between business partners who engage in sexual relations and those who do not.

The petitioner's argument reflects a misunderstanding of the opinions below. In the first place, Article 1481, as noted above, deals only with *gifts* to concubines, and has nothing to do with this lawsuit. In the second place, with respect to the issue of implied contract, the controlling distinction is not between persons who have sexual relations and those who do not, but between persons who are married to each other and those who are not. If Mary Blackledge and John Schwegmann had *not* had sexual relations, her implied contract claim would nevertheless have been rejected. If, however, the parties had been married, she would be entitled to her interest in the assets of the community.<sup>3</sup>

Louisiana's differentiation, for purposes of the community property laws, between those who are married and those who are not does not violate the equal protection clause. This classification is not "suspect" and serves a compelling governmental interest. It is the public policy of the State of Louisiana and every other state to encourage the institutions of marriage and the family.

Marriage is a matter of choice between the partners, and the fact that marriage imports special legal obligations

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<sup>3</sup> It should be noted that the decision below, while refusing to imply rights in Mr. Schwegmann's *property*, did hold that Miss Blackledge may recover in quantum meruit uncompensated business services, rendered separate and apart from the relationship of concubinage.

